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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CENTRAL DISTRICT

ASSURED GUARANTY MUNICIPAL  
CORP., a New York corporation,

Plaintiff,

vs.

ONEWEST BANK, FSB, a Federal Savings  
Association,

Defendant.

CASE NO. BC 489896

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;  
(2) SPECIFIC PERFORMANCE;  
(3) DECLARATORY RELIEF

JURY TRIAL DEMANDED

RECEIVED:  
CHECK: 1,000.00  
CASH:  
CHANGE:  
CARD:  
CIT/CASE: BC489896 LEA/DEF#:  
RECEIPT #: CCH465980812  
DATE PAID: 08/09/12 09:54:52 AM  
PAYMENT: \$1,000.00 0310

RECEIVED:  
CHECK: 435.00  
CASH:  
CHANGE:  
CARD:  
CIT/CASE: BC489896 LEA/DEF#:  
RECEIPT #: CCH465980811  
DATE PAID: 08/09/12 09:54:18 AM  
PAYMENT: \$435.00 0310

COMPLAINT

1 Plaintiff Assured Guaranty Municipal Corp. (formerly known as Financial Security  
2 Assurance Inc. and referred to hereinafter as "Assured"), as and for its Complaint against  
3 OneWest Bank, FSB ("OneWest"), alleges, on personal knowledge as to facts relating to itself and  
4 its agreements and on information and belief as to other facts, as follows:

5 **Nature of the Action**

6 1. Assured brings this action against OneWest as a result of OneWest's failure to  
7 service the mortgage loans underlying certain residential mortgage-backed securities (the  
8 "Mortgage Loans") in compliance with the relevant servicing agreements. Having insured certain  
9 payment obligations relating to the mortgage-backed securities, Assured has suffered and  
10 continues to suffer harm from OneWest's failure to service the underlying loans as required by the  
11 relevant agreements.

12 2. In an effort to mitigate this harm and improve servicing of the Mortgage Loans,  
13 Assured seeks to terminate OneWest as the servicer of the Mortgage Loans in the 2007-H1  
14 Transaction (as defined below) and seeks access to the records and documentation regarding the  
15 Mortgage Loans to which it is entitled under the servicing agreements at issue. Assured further  
16 seeks to recover the insurance claim payments it has been forced to make as a result of OneWest's  
17 failure to maximize the payments yielded by the Mortgage Loans.

18 3. From at least 2001 until at least 2007, IndyMac Bank, F.S.B. ("IndyMac")  
19 originated or acquired pools of mortgage loans that were then sold (or otherwise conveyed) by  
20 depositors, IndyMac ABS, Inc. ("IndyMac ABS") or IndyMac MBS, Inc. ("IndyMac MBS" and,  
21 together with IndyMac ABS, the "Depositors") to trusts created by IndyMac (the "Trusts"). The  
22 Trusts in turn securitized the underlying mortgage loans and issued residential mortgage-backed  
23 certificates (the "Certificates") or notes (the "Notes" and, together with the Certificates, the  
24 "Securities") that were sold to investors (the "Securityholders").

25 4. Assured provided insurance in the form of financial guaranty insurance policies  
26 (the "Policies") to guarantee certain principal and interest payments on certain of the Notes issued  
27 in the IndyMac Home Equity Mortgage Loan Asset-Backed Trust, Series 2007-H1 Transaction  
28 (the "2007-H1 Transaction") and certain of the Certificates issued in the IndyMac IMSC Mortgage

1 Loan Trust 2007-HOA1 Transaction (the "2007-HOA1 Transaction" and, together with the 2007-  
2 H1 Transaction, the "Transactions").

3         5.       The Transactions include transaction documents pursuant to which the loan  
4 servicer (originally IndyMac) agreed, among other things, (a) to administer the Mortgage Loans in  
5 a manner consistent with the practices that the loan servicer uses to service the loans it holds; (b)  
6 to use reasonable efforts to collect all payments owed on the Mortgage Loans, and to follow the  
7 same collection procedures it follows for servicing mortgage loans in its own portfolio; (c) to  
8 administer the Mortgage Loans in a manner consistent with industry standards; and (d) to allow  
9 Assured access to information and documents regarding the Mortgage Loans.

10       6.       On July 11, 2008, IndyMac was shut down by the Office of Thrift Supervision (the  
11 "OTS") and the Federal Deposit Insurance Corporation (the "FDIC") was named receiver and later  
12 conservator. On March 19, 2009, the FDIC and OneWest entered into agreements for the sale of  
13 IndyMac to OneWest. All deposits of IndyMac were transferred to OneWest and OneWest took  
14 over IndyMac's headquarters and acquired most of IndyMac's assets, including the furnishings  
15 and equipment. Many OneWest employees were formerly IndyMac employees, including those  
16 responsible for the servicing of the Mortgage Loans. Indeed, OneWest's mortgage servicing unit  
17 is still called "IndyMac Mortgage Services."

18       7.       OneWest has been the successor servicer for the Transactions since on or about the  
19 second quarter of 2009. (OneWest is hereinafter referred to as the "Servicer" of the Transactions).  
20 Since OneWest became successor Servicer, OneWest's independent auditor, Pricewaterhouse  
21 Coopers ("PwC"), has filed Regulation AB Reports pursuant to 17 C.F.R. Sections 229.1100-  
22 229.1123 (the "Regulation AB Reports") that identify several servicing requirements as to which  
23 OneWest has been materially noncompliant. In addition, the OTS brought an enforcement action  
24 against OneWest captioned *In the Matter of OneWest Bank, F.S.B.* for "unsafe or unsound  
25 practices" in connection with OneWest's "residential mortgage servicing" and its "initiation and  
26 handling of foreclosure proceedings." The enforcement action resulted in a consent order, Order  
27 No. WN-11-011, effective date April 13, 2011 (the "OTS Consent Order"), finding and  
28 confirming that OneWest had engaged in several "unsafe or unsound practices in connection with

foreclosure proceedings.” The Regulation AB Reports and the OTS Consent Order evidence that OneWest is in breach of the servicing requirements in the relevant transaction documents in connection with its servicing of the Mortgage Loans in the Transactions.

8. Since OneWest took over as successor Servicer, the Transactions have experienced significant loan delinquencies and defaults. Many of the delinquent loans became defaulted Mortgage Loans (that is, Mortgage Loans as to which no satisfactory arrangements were made by the Servicer for the collection of delinquent payments), which led to further losses on the Mortgage Loans. Assured believes that these losses could have been mitigated or avoided had OneWest made competent use of its foreclosure and other mitigation options and remedies. Because of the substantial number of loan delinquencies and defaults, the cash flows from the Mortgage Loan payments in the Transactions have been insufficient for the Trusts to meet their payment obligations to the holders of insured Securities. Under the Policies, Assured has had to cover the shortage of funds with respect to the insured Securities.

9. Assured has diligently complied with its obligations under the Policies. As of July 2012, Assured has paid over \$335 million in insurance claims under the Policies with respect to the Transactions.

10. As a result of the significant delinquencies and defaults on the Mortgage Loans, the payments that it has been forced to make, and OneWest’s servicing deficiencies identified in the Regulation AB Reports and the OTS Consent Order, Assured asked OneWest to facilitate a loan and servicing review of the 2007-H1 and the 2007-HOA1 Transactions in an exercise of Assured’s access and review rights in the Transaction documents.

11. Despite its contractual obligation to comply, OneWest refused Assured’s repeated requests that it be provided access to the records and documents related to the Mortgage Loans pursuant to the requirements of the Transaction documents, including the 2007-H1 Insurance and Indemnity Agreement (the “Insurance Agreement”), the 2007-H1 Sale and Servicing Agreement (the “Sale and Servicing Agreement”), and the 2007-HOA1 Pooling and Servicing Agreement (the “Pooling and Servicing Agreement”). Instead, OneWest refused to provide Assured access to or allow Assured to review any loan files or servicing records related to the Mortgage Loans in the

1 2007-H1 Transaction. OneWest agreed to provide Assured only with very limited access to the  
2 records and documents related to the Mortgage Loans in the 2007-HOA1 Transaction, and only if  
3 Assured agreed to OneWest's unreasonable conditions and limitations to access.

4 12. As a further result of the significant delinquencies and defaults on the Mortgage  
5 Loans, Assured sought to transfer servicing of the 2007-H1 Transaction from OneWest to a  
6 different servicer pursuant to Assured's termination rights under the Sale and Servicing  
7 Agreement. OneWest, however, has intentionally thwarted Assured's transfer of servicing by  
8 refusing, in direct contravention to its obligations under various agreements, to continue funding  
9 post transfer the home equity lines of credit that remain open in the 2007-H1 Transaction.

10 13. Assured brings claims for breach of contract to recover the damages OneWest has  
11 caused Assured, and for specific performance and declaratory relief seeking to enforce Assured's  
12 access and termination rights.

### 13 Parties

14 14. Plaintiff Assured is a New York financial guaranty insurance corporation with its  
15 principal place of business in New York, New York. Assured is one of the nation's largest  
16 monoline insurers, providing financial guaranty insurance and other forms of credit protection,  
17 generally on financial obligations sold in the new-issue and secondary markets. Assured is the  
18 "Certificate Insurer" for the 2007-HOA1 Transaction and the "Insurer" for the 2007-H1  
19 Transaction and is qualified to do business in California. Assured is sometimes referred to herein  
20 as the "Insurer" for the Transactions.

21 15. Defendant OneWest is a federally chartered savings association with its principal  
22 place of business in Pasadena, California. OneWest originates and services mortgage loans in  
23 California and elsewhere. OneWest is the successor Servicer to IndyMac Bank, F.S.B. under the  
24 Sale and Servicing Agreement and the Pooling and Servicing Agreement. OneWest assumed  
25 IndyMac's servicing obligations pursuant to the Servicing Business Asset Purchase Agreement by  
26 and between the FDIC as Receiver for IndyMac Federal Bank, FSB and OneWest Bank, FSB (the  
27 "Servicing Asset Purchase Agreement"), dated as of March 19, 2009.

28

1 *Relevant Non-Party*

2       16.     IndyMac Bank, F.S.B. was a federal savings bank with its principal place of  
3 business in Pasadena, California. IndyMac originated or otherwise acquired the Mortgage Loans  
4 underlying the Transactions. IndyMac was the initial loan Servicer and Seller of the Transactions.  
5 IndyMac was placed in Receivership by the FDIC on July 11, 2008. Defendant OneWest has  
6 since assumed IndyMac's servicing rights and obligations under the various Transaction  
7 documents and IndyMac's obligation to fund draws under the 2007-H1 Transaction through a  
8 series of agreements with the FDIC pursuant to the Servicing Asset Purchase Agreement and as  
9 further detailed below.

10                               **Jurisdiction and Venue**

11       17.     Subject matter jurisdiction is appropriate in this Court because the amount in  
12 controversy exceeds this Court's jurisdictional minimum.

13       18.     Venue is appropriate in Los Angeles County because the Defendant, OneWest, has  
14 its principal place of business in Pasadena, Los Angeles County, California.

15                               **Factual Allegations**

16 **I.     IndyMac's Securitization Transactions Generally**

17       19.     IndyMac offered mortgage loans to home buyers and home owners, including those  
18 with limited income or credit history. IndyMac's practice was to securitize the residential  
19 mortgage loans that it originated, purchased, or otherwise acquired through its affiliates and/or  
20 external mortgage brokers or correspondent banks. IndyMac accomplished this by conveying  
21 pools of the mortgage loans to a depositor in exchange for cash. The depositor then conveyed the  
22 pools of mortgage loans to trusts, and the pools of loans would be used as collateral for asset-  
23 backed securities that would be sold to investors.

24       20.     IndyMac also acted as servicer for the mortgage loans in its securitization  
25 transactions, including the 2007-H1 and the 2007-HOA1 Transactions.

26       21.     IndyMac (as Seller and Servicer), IndyMac ABS, Inc. or IndyMac MBS, Inc. (as  
27 Depositor), each Trust (as Issuer), and Assured (as Insurer or Certificate Insurer) entered into  
28 agreements, including servicing agreements, that provided for the issuance of the Policies by

1 Assured, pursuant to which Assured would make insurance payments to cover shortfalls in certain  
2 principal and interest payments on the insured Securities.

3 22. Investors in the Transactions purchased Securities representing an entitlement to  
4 receive certain cash flows derived from the borrower payments made on the underlying Mortgage  
5 Loans. The payments made by borrowers are collected by the Servicer and transferred to the  
6 Trusts and then paid to the Securityholders. The Servicer's actions and adherence to the servicing  
7 requirements and criteria in the relevant servicing agreements and according to industry standards  
8 are essential to maximize timely and complete payments. Servicing in compliance with the  
9 servicing agreements and industry standards is critical to the Securityholders so they receive  
10 timely payments and to Assured so that it can keep its insurance payments to a minimum and  
11 maximize the recovery under its subrogation rights and under the Transaction documents.

12 23. While under the Policies and the other Transaction documents and through its right  
13 to subrogation, Assured is entitled to receive payment from the related Trust of the total amount  
14 paid by Assured under the related Policy plus interest accrued thereon, this payment is  
15 subordinated to, among other things, the right of the holders of the insured Securities to be paid  
16 the entire principal amount of the insured Securities plus the contractual interest on that security  
17 during the period that it is outstanding. Due to the poor quality of the Mortgage Loans, as  
18 exacerbated by deficient servicing of the Mortgage Loans, Assured stands to recover little, if any,  
19 of the over \$335 million paid by Assured as of July 2012, in insurance claims under the Policies  
20 with respect to the Transactions.

## 21 **II. Overview of the 2007-H1 and 2007-HOA1 Transactions**

22 24. Assured provided financial guaranty insurance policies in connection with the  
23 Transactions.

### 24 **A. Overview of the 2007-H1 Transaction**

25 25. The 2007-H1 Transaction is backed by a pool of adjustable rate home equity line of  
26 credit loans. A home equity line of credit (a "HELOC") is a variable-rate loan secured by a lien  
27 on residential property in which a homeowner may borrow against home equity as needed. The  
28 HELOC lien is typically junior to one or more senior liens. The borrower's equity in the property

1 (i.e., the value of the property above the amount of any senior liens) collateralizes a specified line  
2 of credit that may be drawn down by the borrower similar to a credit card. These "draws" on the  
3 home equity lines of credit continue to occur and remain the Seller's obligation to fund under the  
4 2007-H1 Transaction Documents.

5 26. A substantial percentage (approximately 98.6%) of the HELOCs underlying the  
6 2007-H1 Transaction were secured by second liens. Second liens, by definition, are junior in  
7 priority to the associated first liens. If the subject property is foreclosed upon, the proceeds from  
8 the sale of the property must be used to fully satisfy the first lien before the second-lien HELOCs  
9 are paid.

10 27. Approximately 80% of the HELOCs in the 2007-H1 mortgage loan pool were  
11 originated by IndyMac. The other 20% were originated by other mortgage lenders and then  
12 acquired by IndyMac.

13 28. The 2007-H1 Transaction closed on March 23, 2007, with an approximate initial  
14 principal mortgage loan balance of \$650,071,586. It included the following documents and  
15 agreements, among others: (a) a Mortgage Loan Purchase Agreement that provided for the sale of  
16 the related Mortgage Loans by IndyMac to IndyMac ABS (the "Mortgage Loan Purchase  
17 Agreement"); (b) an Amended and Restated Trust Agreement that created the related Trust; (c) the  
18 Sale and Servicing Agreement, which provided for the transfer of the related Mortgage Loans by  
19 IndyMac ABS to the related Trust, and confirmed the terms of IndyMac's engagement by the  
20 Trust to service the related Mortgage Loans; (d) an Indenture that provided for the issuance of the  
21 Notes by the Trust and established the obligations of the Indenture Trustee; (e) the related Policy;  
22 and (f) the Insurance Agreement (collectively, the "2007-H1 Transaction Documents".)

23 29. Assured issued the related Policy on or about March 23, 2007 for the benefit of the  
24 related Securityholders. The initial principal amount of the Notes insured by Assured totaled  
25 \$650,071,000. The Policy provides that Assured "unconditionally and irrevocably guarantees to  
26 each Holder . . . the full and complete payment by the Obligor of Scheduled Payments of  
27 principal of, and interest on, the Obligations."

28



1           30.     The Sale and Servicing Agreement defines certain of the rights and obligations as  
2 between Assured as Insurer and IndyMac as Servicer (and hence OneWest as successor Servicer)  
3 of the 2007-H1 Transaction. It was executed on or about March 14, 2007 between IndyMac ABS,  
4 Inc. as Depositor, IndyMac Bank F.S.B. as Seller and Servicer, and Deutsche Bank National Trust  
5 Company as Indenture Trustee. Assured is an express third-party beneficiary of the Sale and  
6 Servicing Agreement pursuant to Section 10.09 thereof.

7           31.     The following components of the 2007-H1 Transaction were undertaken pursuant  
8 to the 2007-H1 Transaction Documents. First, pursuant to the Mortgage Loan Purchase  
9 Agreement, IndyMac sold the pool of Mortgage Loans to the related Depositor, IndyMac ABS,  
10 and the mechanism for funding HELOC draws was established, obligating IndyMac to fund all  
11 draws. Second, pursuant to the Sale and Servicing Agreement, IndyMac ABS transferred the  
12 Mortgage Loans to the 2007-H1 Trust to serve as collateral for the Notes to be sold to investors.  
13 Third, the Notes were issued and the Mortgage Loans were pledged by the Trust to serve as  
14 collateral for the Notes pursuant to the terms of the Indenture. Fourth, IndyMac serviced the  
15 Mortgage Loans under the Sale and Servicing Agreement.

16           **B.     Overview of the 2007-HOA1 Transaction**

17           32.     The 2007-HOA1 Transaction pool was created by pooling residential mortgage  
18 loans acquired by IndyMac from other "conduit" entities.

19           33.     The 2007-HOA1 Transaction was comprised primarily of 30- and 40-year  
20 conventional adjustable rate negative amortization loans secured by first liens. A negative  
21 amortization loan is a loan for which, during a specified period, the unpaid interest amount is  
22 added to the outstanding principal balance in the event that the actual monthly payments made are  
23 insufficient to cover the interest that has accumulated for that period.

24           34.     The 2007-HOA1 Transaction closed on June 29, 2007, with an approximate initial  
25 principal mortgage loan balance of \$434,344,776. As of June 1, 2007, the Mortgage Loan pool  
26 underlying the 2007-HOA1 Transaction included at least 1,321 negative amortization loans. The  
27 2007-HOA1 Transaction included the following documents and agreements, among others: (a) the  
28 Pooling and Servicing Agreement, which created the related securitization Trust and confirmed

1 the terms of IndyMac's engagement by the Trust to service the related Mortgage Loans; and (b)  
2 the related Policy (collectively, the "2007-HOA1 Transaction Documents," and, collectively with  
3 the 2007-H1 Transaction Documents, the "Transaction Documents").

4 35. Assured issued the related Policy on or about June 29, 2007, insuring payments for  
5 certain specified classes of Certificates issued in the 2007-HOA1 Transaction. The initial  
6 principal amount of Certificates that Assured insured totaled \$152,892,000. The Policy provides  
7 that Assured "unconditionally and irrevocably guarantees to each Trustee for the benefit of each  
8 Holder . . . the full and complete payment of Guaranteed Distributions with respect to the  
9 Certificates of the Trust referred to above."

10 36. The Pooling and Servicing Agreement defines certain of the rights and obligations  
11 as between Assured as Certificate Insurer and IndyMac as Servicer and then OneWest as successor  
12 Servicer of the 2007-HOA1 Transaction. It was executed on or about June 28, 2007 between  
13 IndyMac MBS as Depositor, IndyMac Bank, F.S.B. as Seller and Servicer, and Deutsche Bank  
14 National Trust Company as Trustee and Supplemental Interest Trustee. Assured is an express  
15 third-party beneficiary of the Pooling and Servicing Agreement pursuant to Section 10.14 thereof.

16 37. The following components of the 2007-HOA1 Transaction were undertaken  
17 pursuant to the Pooling and Servicing Agreement: First, IndyMac sold the pool of Mortgage  
18 Loans to the Depositor, IndyMac MBS. Second, IndyMac MBS transferred the Mortgage Loans  
19 to the related Trust to serve as the Trust property for the Certificates to be sold to investors. Third,  
20 the Certificates were issued pursuant to the terms of the Pooling and Servicing Agreement.  
21 Fourth, IndyMac serviced the Mortgage Loans under the Pooling and Servicing Agreement.

22 **III. OneWest's Assumption of IndyMac's Obligations Under the Transaction Documents**

23 38. After the FDIC was appointed receiver of IndyMac, the FDIC transferred many of  
24 IndyMac's assets and liabilities to a newly-formed thrift, IndyMac Federal Bank, FSB ("IndyMac  
25 Federal"). The FDIC was appointed Conservator and later Receiver for IndyMac Federal.

26 39. Through a series of transactions and intermediate holding companies, including  
27 IMB HoldCo, LLC ("HoldCo"), OneWest was formed to purchase many of IndyMac Federal's  
28

1 rights and obligations, including IndyMac Federal's servicing and funding rights and obligations  
2 under the Transaction Documents.

3 40. HoldCo and OneWest purchased most of IndyMac's assets and assumed some of  
4 IndyMac's liabilities via the Master Purchase Agreement by and among the FDIC as Conservator  
5 for IndyMac Federal, HoldCo, and OneWest dated March 18, 2009 (the "Master Purchase  
6 Agreement").

7 41. The FDIC transferred IndyMac's servicing and funding obligations to OneWest  
8 pursuant to the Servicing Asset Purchase Agreement. The Servicing Asset Purchase Agreement  
9 transferred IndyMac's servicing portfolio, including the Transactions along with many other  
10 securitizations; each securitization being governed by multiple transaction documents, involving  
11 multiple parties. Because the Servicing Asset Purchase Agreement sought to transfer IndyMac's  
12 servicing and funding obligations pursuant to multiple transactions with a variety of governing  
13 agreements, which varied as to where the servicing obligations were located, Section 2.03 of the  
14 Servicing Asset Purchase Agreement provides that OneWest assumes "all obligations imposed on  
15 the servicer under the Servicing Agreements from and after the Closing Date."

16 42. OneWest also agreed in the Servicing Asset Purchase Agreement to "pay, perform  
17 and discharge those liabilities and obligations expressly assumed by OneWest under this  
18 Agreement relating to the Servicing Rights and other Assets acquired hereunder, including those  
19 liabilities and obligations under the related Servicing Agreements." Servicing Asset Purchase  
20 Agreement § 10.02.

21 43. The Servicing Asset Purchase Agreement defines "Servicing Agreements" as "all  
22 Contracts (including Pooling and Servicing Agreements) *pursuant to which the Seller acts as a*  
23 *mortgage loan servicer* ... and any other Contracts entered into by the Seller in its capacity as  
24 servicer in connection with any Securitization Transaction." *Id.* § 1.01. Contract means "any  
25 written agreement." *Id.* "Servicing Agreements" under the Servicing Asset Purchase Agreement  
26 therefore includes the Sale and Servicing Agreement, the Insurance Agreement, and the Pooling  
27 and Servicing Agreement because IndyMac entered into these agreements in its capacity as  
28 Servicer and acted as a mortgage loan servicer pursuant to these agreements. OneWest confirmed

1 its acceptance and assumption of the terms of the Servicing Agreements at issue here when it  
2 commenced its performance as Servicer of the Transactions. No provision in the Servicing Asset  
3 Purchase Agreement excuses OneWest's compliance with the obligations it assumed as the  
4 Servicer of the Transactions as set forth in the Sale and Servicing Agreement, the Insurance  
5 Agreement, and the Pooling and Servicing Agreement.

6 44. OneWest additionally agreed in the Servicing Asset Purchase Agreement to follow  
7 a minimum servicing standard of care, agreeing to

8 (i) exercise the degree of care which is standard in the industry with  
9 respect to the servicing of similar loans (including the conduct of  
10 foreclosures and the management of property) and the collection of  
11 similar advances and claims and (ii) service such Mortgage Loans in  
12 strict accordance with applicable Law and regulations and in  
13 accordance with applicable Servicing Agreements. In the event  
14 there is a conflict between any provision of this Agreement on the  
15 one hand, and any applicable Servicing Agreement and/or any  
16 Investor or Insurer requirements on the other hand, the latter shall  
17 govern [OneWest's] conduct.

18 *Id.* § 10.03.

19 45. OneWest further agreed that it would continue to provide Assured, as insurer of the  
20 Transactions, with "such access to information and personnel and notice of material events, in  
21 each case, as the Purchaser is required to provide to such insurer in accordance with the applicable  
22 Servicing Agreement." *Id.* § 10.13. OneWest assumed all of IndyMac's obligations to Assured to  
23 provide access to books, records, documents, and information that are enforceable against the  
24 Servicer under the Sale and Servicing Agreement, the Insurance Agreement, and the Pooling and  
25 Servicing Agreement. *Id.*

26 46. The Servicing Asset Purchase Agreement transferred more than IndyMac's  
27 servicing obligations to OneWest under the 2007-H1 Transaction Documents. The FDIC also  
28 delegated and assigned to OneWest and OneWest assumed the FDIC's obligation in its capacity as  
Receiver for IndyMac Federal Bank and IndyMac ABS to "fund all Draws as required under the  
terms of the agreements related to the Securitization Transactions." *Id.* § 10.06. "Draws" in the  
Servicing Asset Purchase Agreement "means with respect to a home equity line of credit, an  
additional borrowing by the related Mortgagor subsequent to the Closing Date in accordance with

1 the related Mortgage Loan Documents.” *Id.* § 1.01. “Securitization Transaction” in the Servicing  
2 Asset Purchase Agreement means:

3 any transaction involving either (1) a sale or other transfer of some  
4 or all of the Mortgage Loans directly or indirectly to an issuing  
5 entity in connection with an issuance of publicly-offered or  
6 privately-placed, rated or unrated, mortgage-backed securities or (2)  
7 an issuance of publicly-offered or privately-placed, rated or unrated,  
8 securities, the payments on which are determined primarily by  
9 reference to one or more portfolios of residential mortgage loans  
10 consisting, in whole or in part, of some or all of the Mortgage  
11 Loans.

12 *Id.*

13 47. IndyMac, as Seller, retained the obligation to fund Draws under the Mortgage Loan  
14 Purchase Agreement. *See* Mortgage Loan Purchase Agreement §§ 2.01 & 2.03(b). This  
15 obligation was not a Servicer obligation and IndyMac would have remained so obligated even if it  
16 had been removed as the Servicer. OneWest assumed that obligation pursuant to Section 10.06 of  
17 the Servicing Asset Purchase Agreement.

18 48. Under the Servicing Asset Purchase Agreement, the FDIC is required to reimburse  
19 OneWest for the Draws that OneWest funds. Servicing Asset Purchase Agreement § 10.06. On  
20 information and belief, the FDIC has reimbursed and continues to reimburse OneWest for funding  
21 Draws pursuant to Servicing Asset Purchase Agreement § 10.06, including the Draws funded to  
22 borrowers of the 2007-H1 Mortgage Loans.

23 49. The obligation to fund Draws in connection with the 2007-H1 Mortgage Loans is a  
24 continuing obligation of OneWest even if it no longer is the Servicer. The Servicing Asset  
25 Purchase Agreement requires OneWest to fund all Draws as required by the agreements related to  
26 the 2007-H1 Transaction, including the Mortgage Loan Purchase Agreement. The Mortgage Loan  
27 Purchase Agreement does not permit cessation of funding of Draws taken against the 2007-H1  
28 Mortgage Loans even if OneWest is terminated as the Servicer.

1 **IV. OneWest's Breaches of the Sale and Servicing Agreement, the Insurance Agreement,**  
2 **the Pooling and Servicing Agreement, and Other Transaction Documents**

3 **A. OneWest's Failure to Service the Mortgage Loans as Required Under the**  
4 **Sale and Servicing Agreement and the Pooling and Servicing Agreement**

5 50. As the successor Servicer for the Transactions, OneWest is required to comply with  
6 the servicing requirements and criteria set forth in the relevant servicing agreements. OneWest is  
7 also required to "exercise the degree of care which is standard in the industry with respect to the  
8 servicing of similar loans." Servicing Asset Purchase Agreement §10.03.

9 51. Since OneWest began servicing the Mortgage Loans, the Mortgage Loans have  
10 experienced delinquencies and defaults at a severe and unexpected rate, causing significant  
11 shortfalls in cash flows from the Mortgage Loans needed to make payments to the  
12 Securityholders. The deficient servicing of the Mortgage Loans by OneWest has increased the  
13 amount of claim payments required to be made by Assured.

14 1. Servicing Requirements in the Sale and Servicing Agreement

15 52. OneWest, as successor Servicer, agreed in the Servicing Asset Purchase Agreement  
16 to assume the obligations and liabilities of the Servicer as if it had originally been a party to the  
17 2007-H1 Servicing Agreements (defined by the Servicing Asset Purchase Agreement to include  
18 the Sale and Servicing Agreement). *See id.* § 2.03(c), Schedule 1.01(b); *see also* Sale and  
19 Servicing Agreement §§ 1.01 & 10.09.

20 53. The Sale and Servicing Agreement requires the Servicer to service and administer  
21 the Mortgage Loans in accordance with Accepted Servicing Practices. Sale and Servicing  
22 Agreement § 3.01. The Sale and Servicing Agreement defines Accepted Servicing Practices as the  
23 "Servicer's normal servicing practices in servicing and administering revolving home equity line  
24 of credit loans for its own account, which in general will conform to the mortgage servicing  
25 practices of prudent mortgage lending institutions, which service for their own account, mortgage  
26 loans of the same type as the Mortgage Loans in the jurisdiction in which the related Mortgaged  
27 Properties are located." *Id.* § 1.01.

28

1           54.     The Servicer's servicing obligations under the Sale and Servicing Agreement  
2 include but are not limited to: (a) collecting mortgage payments; (b) implementing loss mitigation  
3 efforts; (c) establishing and maintaining a collection account; (d) paying or advancing certain  
4 taxes, assessments and hazard insurance premiums; (e) keeping detailed records; (f) maintaining  
5 insurance policies on the Mortgage Loans; (g) enforcing due-on-sale clauses; (h) foreclosing on  
6 properties "as to which no satisfactory arrangements can be made for collection of delinquent  
7 payments"; and (i) delivering an annual statement as to compliance to the trustee of the Trust and  
8 Assured. *See id.* §§ 2.01, 2.02, 3.01(h), 3.02(a), 3.02(b), 3.04, 3.07(a), 3.07(b), 3.10, 3.11, 3.16,  
9 and 3.17.

10           55.     The Sale and Servicing Agreement expressly requires the Servicer to "service and  
11 administer the Mortgage Loans in accordance with all requirements of the Servicing Criteria  
12 applicable to the Servicer" under Regulation AB. *Id.* § 3.11. ("Servicing Criteria" is defined in  
13 Exhibit P to the Sale and Servicing Agreement to be the criteria identified in Regulation AB).

14           56.     OneWest, as Servicer, is required to engage in loss mitigation efforts in  
15 connection with payments on the Mortgage Loans. Section 3.02 of the Sale and Servicing  
16 Agreement requires the Servicer to:

17                   make reasonable efforts to collect all payments called for under the  
18                   terms and provisions of the Mortgage Loans and shall, to the extent  
19                   such procedures shall be consistent with this Agreement, follow  
20                   such collection procedures as it follows with respect to mortgage  
21                   loans in its servicing portfolio comparable to the Mortgage Loans.  
22                   Consistent with the foregoing, and without limiting the generality of  
23                   the foregoing, the Servicer may in its discretion (i) ... waive any  
24                   Early Termination Fee or late payment charge or any assumption  
25                   fees or other fees which may be collected in the ordinary course of  
26                   servicing such mortgage loan, (ii) arrange with a Mortgagor a  
27                   schedule for the payment of principal and interest due and unpaid;  
28                   provided that such arrangement is consistent with the Servicer's  
29                   policies with respect to the mortgage loans it owns or services ...

30           57.     Section 3.01(h) of the Sale and Servicing Agreement authorizes the Servicer to  
31 modify certain eligible Mortgage Loans that are "in default or if default is reasonably foreseeable,  
32 and if the Servicer has determined the modification of that Mortgage Loan to be in the best  
33 interests of the [Securityholders] and the Insurer." Section 3.01(h) also allows the Servicer to  
34 modify a Mortgage Loan that is *not* in default and default is *not* reasonably foreseeable," provided,

1 among other requirements, that the modification is done in accordance with more general  
2 “accepted servicing practices of prudent mortgage loan servicers.”

3 58. The Sale and Servicing Agreement requires OneWest to initiate foreclosure efforts  
4 and comply with Accepted Servicing Practices:

5 The Servicer shall foreclose upon or otherwise comparably convert  
6 to ownership Mortgaged Properties securing such of the Mortgage  
7 Loans as come into and continue in default when no satisfactory  
8 arrangements can be made for collection of delinquent payments  
pursuant to Section 3.01... In connection with foreclosure or other  
conversion, the Servicer will follow Accepted Servicing Practices. . .

9 *Id.* § 3.07(b). The Sale and Servicing Agreement anticipates that OneWest will consider  
10 alternative arrangements before initiating foreclosure proceedings and will adhere to the Accepted  
11 Servicing Practices.

12 59. The Sale and Servicing Agreement contains explicit requirements for OneWest’s  
13 use of subcontractors to service the Mortgage Loans. The Sale and Servicing Agreement provides  
14 that “the Servicer shall remain obligated and primarily liable for the servicing and administering of  
15 the Mortgage Loans in accordance with the provisions of this Agreement without diminution of  
16 such obligation or liability.” *Id.* § 3.01(b). Moreover, OneWest’s use of subcontractors must  
17 comply with the Accepted Servicing Practices and OneWest must “service and administer the  
18 Mortgage Loans in accordance with all requirements of the Servicing Criteria applicable to the  
19 Servicer” in accordance with the Servicing Criteria set forth in Regulation AB. *See id.* § 3.11.  
20 Regulation AB Item 1122(d)(1)(ii) provides that “[i]f any material servicing activities are  
21 outsourced to third parties, policies and procedures are [to be] instituted to monitor the third  
22 party’s performance and compliance with such servicing activities.”

23 60. OneWest must also maintain an Eligible Account in an Eligible Institution under  
24 the Sale and Servicing Agreement for the payments on the Mortgage Loans. *See id.* §3.02(b).  
25 Section 3.02(c) of the Sale and Servicing Agreement obligates OneWest to use “its best efforts to  
26 cause the institution maintaining the Collection Account to invest only the Interest Collections on  
27 deposit in the Collection Account attributable to the Mortgage Loans in Eligible Investments.”  
28 Eligible Accounts, Eligible Institutions, and Eligible Investments are defined in Section 1.01 of



1 the Sale and Servicing Agreement. Eligibility requires that the account, institution or investment  
2 is highly rated by Moody's and S&P.

3           2.     Servicing Requirements in the Pooling and Servicing Agreement

4           61.     OneWest, as successor Servicer, agreed in the Servicing Asset Purchase Agreement  
5 to assume the obligations and liabilities of the Servicer as if it has originally been named a party to  
6 the 2007-HOA1 Servicing Agreements (defined in the Servicing Business Purchase Agreement to  
7 include the Pooling and Servicing Agreement). *See* Servicing Asset Purchase Agreement  
8 § 2.03(c), Schedule 1.01(b); *see also* Pooling and Servicing Agreement §§ 1.01 (definition of  
9 "Servicer"), 7.02.

10          62.     The Pooling and Servicing Agreement obligates the Servicer, OneWest, to "service  
11 and administer the Mortgage Loans in accordance with [the Pooling and Servicing Agreement]  
12 and the Servicing Standard . . . [f]or and on behalf of the Certificateholders and the Certificate  
13 Insurer." Pooling and Servicing Agreement § 3.01. The Pooling and Servicing Agreement  
14 defines the Servicing Standard as "[t]hat degree of skill and care exercised by the Servicer with  
15 respect to mortgage loans comparable to the Mortgage Loans serviced by the Servicer for itself or  
16 others." *Id.* § 1.01.

17          63.     The Pooling and Servicing Agreement Servicing Standard requires the Servicer to  
18 service the Mortgage Loans with at least the same level of care and skill as the Servicer uses to  
19 service loans in other pools. Where the Pooling and Servicing Agreement provides for Servicer  
20 discretion, the Servicer must exercise that discretion in accordance with the Servicing Standard.  
21 Where the Pooling and Servicing Agreement permits loss mitigation efforts such as loan  
22 modifications, the Servicer must agree to modify, or refuse to modify, loans in the 2007-HOA1  
23 pool according to the Servicer's usual practices and procedures.

24          64.     The Servicer's servicing obligations under the Pooling and Servicing Agreement  
25 include, but are not limited to: (a) collecting mortgage payments; (b) implementing loss mitigation  
26 efforts; (c) establishing and maintaining a Certificate Account; (d) paying or advancing certain  
27 taxes, assessments and hazard insurance premiums; (e) keeping detailed records; (f) maintaining  
28 insurance policies on the Mortgage Loans; (g) enforcing due-on-sale clauses; (h) foreclosing on

1 properties "as to which no satisfactory arrangements can be made for collection of delinquent  
2 payments"; and (i) delivering an annual statement as to compliance to the trustee of the Trust and  
3 Assured. *See id.* §§ 3.06(a), 3.06(d), 3.07(c), 3.09(a), 3.10, 3.11, 3.12, and 3.17(a).

4 65. OneWest, as the Servicer, is required to engage in loss mitigation efforts in  
5 connection with payments on the Mortgage Loans. Section 3.06 of the Pooling and Servicing  
6 Agreement provides:

7 In accordance with and to the extent of the Servicing Standard, the  
8 Servicer shall make reasonable efforts in accordance with the  
9 customary and usual standards of practice of prudent mortgage  
10 servicers to collect all payments called for under the Mortgage  
11 Loans to the extent the procedures are consistent with this  
12 Agreement. . . . Consistent with the foregoing, the Servicer may in  
13 its discretion . . . extend the due dates for payments due on a  
14 Delinquent Mortgage Loan for a period not greater than 125 days.  
15 In connection with a seriously delinquent or defaulted Mortgage  
16 Loan, the Servicer may, consistent with the Servicing Standard,  
17 waive, modify or vary any term of that Mortgage Loan . . . accept  
18 payment from the related Mortgagor of an amount less than the  
19 Stated Principal Balance in final satisfaction of that Mortgage Loan,  
20 or consent to the postponement of strict compliance with any such  
21 term or otherwise grant indulgence to any Mortgagor if in the  
22 Servicer's determination such waiver, modification, postponement  
23 or indulgence is not materially adverse to the interests of the  
24 Certificateholders or the Certificate Insurer (taking into account any  
25 estimated loss that might result absent such action) and is expected  
26 to minimize the loss on such Mortgage Loan.

27 By its terms, Section 3.06 requires the Servicer to collect loan payments and engage in loss  
28 mitigation techniques "in accordance with and to the extent of the Servicing Standard" to minimize  
Securityholder and Certificate Insurer losses.

66. The Pooling and Servicing Agreement also requires OneWest to conform its  
foreclosure practices to the 2007-HOA1 Servicing Standard:

The Servicer shall use reasonable efforts in accordance with the  
Servicing Standard to foreclose on or otherwise comparably convert  
the ownership of assets securing such of the Mortgage Loans as  
come into and continue in default and as to which no satisfactory  
arrangements can be made for the collection of delinquent  
payments. In connection with the foreclosure or other conversion,  
the Servicer shall follow the Servicing Standard.

1 *Id.* § 3.12. Section 3.12 anticipates that OneWest will consider alternative arrangements before  
2 initiating foreclosure proceedings, will adhere to the Servicing Standard, and will make reasonable  
3 efforts to foreclose when foreclosure becomes necessary.

4 67. OneWest is also required by the Pooling and Servicing Agreement to institute  
5 policies and procedures to monitor any subcontractors it uses to service the Mortgage Loans.  
6 Section 11.08 of the Pooling and Servicing Agreement mandates that the Servicer provide upon  
7 request “a written description . . . of the role and function of each Subcontractor utilized by such  
8 Person . . . within the meaning of Item 1122 of Regulation AB, and . . . which elements of the  
9 Servicing Criteria will be addressed in assessments of compliance provided by each  
10 Subcontractor.”

11 68. The Pooling and Servicing Agreement also requires OneWest to maintain a  
12 Certificate Account. *Id.* § 3.06(d). Section 3.09 of the Pooling and Servicing Agreement provides  
13 that OneWest shall “keep and maintain separate accounting on a Mortgage Loan by Mortgage  
14 Loan basis, to justify any withdrawal from the Certificate Account.” Section 3.09 also provides a  
15 set procedures for the Servicer to follow and other provisions further regulate OneWest’s  
16 maintenance of the Certificate Account, including restrictions on account location and  
17 investments.

18 3. OneWest’s Failure to Service the Mortgage Loans as Required Under the  
19 Sale and Servicing Agreement and the Pooling and Servicing Agreement

20 69. As detailed above, the Sale and Servicing Agreement and the Pooling and  
21 Servicing Agreement provide numerous servicing requirements OneWest is required to follow,  
22 including without limitation the Accepted Servicing Practices and the Servicing Standard  
23 (sometimes together referred to herein as the “Servicing Requirements”). Assured is informed and  
24 believes that OneWest is not complying with the Servicing Requirements in the Pooling and  
25 Servicing Agreement and the Sale and Servicing Agreement. Assured bases this belief on, among  
26 other things, the significant delinquencies and defaults experienced by the Mortgage Loans, the  
27 Regulation AB Reports and the OTS Consent Order. Assured has been precluded from including  
28

1 additional details of OneWest's noncompliance as a result of OneWest's failure to give Assured its  
2 bargained for access to OneWest's records, as set forth below.

3 *OneWest's Regulation AB Reports*

4 70. Because OneWest is a servicer of a mortgage backed securitization pool,  
5 Regulation AB Item 1122, 17 C.F.R. § 229.1122, requires OneWest to assess its compliance with  
6 the applicable servicing criteria and to have its independent auditor attest to OneWest's Regulation  
7 AB compliance statement. Regulation AB's servicing criteria are among the same criteria  
8 OneWest is required to meet under the Sale and Servicing Agreement and the Pooling and  
9 Servicing Agreement (e.g., loss mitigation efforts, foreclosure practices, oversight of  
10 subcontractors, and maintenance of custodial accounts).

11 71. Since OneWest assumed the role of Servicer for the Transactions, each of its  
12 independent auditor's required Regulation AB attestations have identified OneWest's material  
13 noncompliance with one or more servicing criteria—also requirements under the Sale and  
14 Servicing Agreement and the Pooling and Servicing Agreement.

15 72. PwC's March 4, 2011 Regulation AB Report identifies OneWest's material  
16 noncompliance with Item 1122(d)(4)(vii) of Regulation AB during the year ended December 31,  
17 2010. Regulation AB Item 1122(d)(4)(vii) provides that: "Loss mitigation or recovery actions  
18 (e.g., forbearance plans, modifications and deeds in lieu of foreclosure, foreclosures and  
19 repossessions, as applicable) are initiated, conducted and concluded in accordance with the  
20 timeframes or other requirements established by the transaction agreements." PwC specifically  
21 found that "certain instances were identified where foreclosure timelines exceeded investor and  
22 agency timeline standards."

23 73. On March 9, 2012, PwC reported that OneWest's servicing was in material non-  
24 compliance with three of Regulation AB's servicing criteria: 1122(d)(1)(ii), 1122(d)(2)(v), and  
25 1122(d)(4)(vii).

26 74. Regulation AB Item 1122(d)(1)(ii) provides that "[i]f any material servicing  
27 activities are outsourced to third parties, policies and procedures are instituted to monitor the third  
28 party's performance and compliance with such servicing activities." PwC found that: "some

1 instances were identified where policies and procedures relating to management of third party  
2 service providers performing material foreclosure functions were not instituted to monitor the third  
3 party's performance and compliance with such servicing activities."

4 75. Regulation AB 1122(d)(2)(v) requires that "each custodial account is maintained at  
5 a federally insured depository institution as set forth in the transaction agreements." PwC noted  
6 that: "certain instances were identified where the custodial accounts were not maintained as set  
7 forth in the transaction agreements."

8 76. Regulation AB Item 1122(d)(4)(vii) requires that: "[l]oss mitigation or recovery  
9 actions (c.g., forbearance plans, modifications and deeds in lieu of foreclosure, foreclosures and  
10 repossessions, as applicable) are initiated, conducted and concluded in accordance with the  
11 timeframes or other requirements established by the transaction agreements." PwC found that "in  
12 some instances loss mitigation or recovery actions were not initiated, conducted or concluded in  
13 accordance with the required timeframes established under the transaction agreements."

14 77. Each of the Regulation AB servicing criteria with which OneWest is in material  
15 noncompliance is embodied in the servicing requirements in the Sale and Servicing Agreement  
16 and the Pooling and Servicing Agreement. OneWest's Regulation AB Reports identify the  
17 Transactions as among the securitizations affected by OneWest's noncompliance and the Reports  
18 are unambiguous that OneWest has violated the servicing requirements in the Sale and Servicing  
19 Agreement and the Pooling and Servicing Agreement. The Mortgage Loans continue to  
20 experience delinquencies and defaults at a severe and unexpected rate, resulting in significant  
21 shortfalls in cash flows from the Mortgage Loans needed to make payments to the  
22 Securityholders. The deficient servicing of the Mortgage Loans by OneWest has resulted in an  
23 increased amount of claim payments required to be made by Assured.

24 *The OTS Consent Order*

25 78. OneWest's deficient and poor servicing practices resulted in an enforcement action  
26 by the OTS for "unsafe or unsound [servicing] practices" and ultimately a Consent Order against  
27 OneWest dated April 13, 2011. In the OTS Consent Order, the OTS found that OneWest had  
28

1 engaged in several "unsafe or unsound practices" in connection with foreclosure proceedings. In  
2 particular, the OTS found that OneWest had:

3 filed or caused to be filed in state and federal courts numerous  
4 affidavits executed by its employees or employees of third-party  
5 service providers making various assertions, such as ownership of  
6 the mortgage note and mortgage, the amount of the principal and  
7 interest due, and the fees and expenses chargeable to the borrower,  
8 in which the affiant represented that the assertions in the affidavit  
9 were made based on personal knowledge or based on a review by  
10 the affiant of the relevant books and records, when, in many cases,  
11 they were not based on such personal knowledge or review of the  
12 relevant books and records[.]

13 OTS Consent Order ¶ 2(a). The OTS Consent Order also stated that OneWest had "filed or caused  
14 to be filed in state and federal courts, or in local land records offices, numerous affidavits or other  
15 mortgage-related documents that were not properly notarized, specifically that were not signed or  
16 affirmed in the presence of a notary." *Id.* ¶ 2(b).

17 79. The OTS further found that OneWest had "litigated foreclosure and bankruptcy  
18 proceedings and initiated non-judicial foreclosure proceedings without always ensuring that the  
19 promissory note and mortgage document were properly endorsed or assigned and, if necessary, in  
20 the possession of the appropriate party at the appropriate time." *Id.* ¶ 2(c).

21 80. According to the OTS, OneWest "failed to devote sufficient financial, staffing and  
22 managerial resources to ensure proper administration of its foreclosure processes." *Id.* ¶ 2(d).  
23 OneWest also "failed to devote to its foreclosure processes adequate oversight, internal controls,  
24 policies, and procedures, compliance risk management, internal audit, third party management,  
25 and training." *Id.* ¶ 2(e).

26 81. The OTS also found that OneWest had "failed sufficiently to oversee outside  
27 counsel and other third-party providers handling foreclosure-related services." *Id.* ¶ 2(f).

28 82. On information and belief, OneWest's deficient foreclosure practices described in  
the OTS Consent Order affect and continue to affect Mortgage Loans in the Transactions and  
constitute breaches of the Servicing Requirements of the Sale and Servicing Agreement and the  
Pooling and Servicing Agreement, including but not limited to the requirements regarding loss  
mitigation efforts, foreclosure proceedings and oversight of subcontractors.

1           83. In light of its findings, the OTS ordered OneWest to create and implement a  
2 Comprehensive Action Plan to “ensure compliance with this Order.” *Id.* ¶ 9(a).

3           84. Despite the OTS Consent Order and Comprehensive Action Plan, on information  
4 and belief, OneWest has continued to breach its servicing obligations under the Sale and Servicing  
5 Agreement and the Pooling and Servicing Agreement; the Mortgage Loans continue to experience  
6 delinquencies and defaults at a severe and unexpected rate, resulting in significant shortfalls in  
7 cash flows from the Mortgage Loans needed to make payments to the Securityholders. The  
8 deficient servicing of the Mortgage Loans by OneWest has resulted in an increased amount of  
9 claim payments required to be made by Assured.

10           **B. OneWest’s Refusal to Grant Assured Access to and Review of the Records and**  
11           **Documents Relating to the Mortgage Loans in the Transactions**

12           85. As a result of the significant delinquencies and defaults on the Mortgage Loans, the  
13 payments that it has been forced to make, and OneWest’s servicing deficiencies identified in the  
14 Regulation AB Reports and the OTS Consent Order, Assured asked to conduct a loan and  
15 servicing review of 2007-H1 and the 2007-HOA1 Transactions by exercising its access and review  
16 rights in the Transaction documents.

17           1. OneWest’s Refusal to Grant Assured Access to and Review of the  
18 Records and Documents Relating to the 2007-H1 Mortgage Loans

19           86. Assured, as Insurer to the 2007-H1 Transaction, received access and review rights  
20 enforceable against the Servicer under the Insurance Agreement and the Sale and Servicing  
21 Agreement and as a condition precedent to the issuance of the related Policy. *See* Insurance  
22 Agreement §§ 2.03(a)(iii)(c) & 4.02(b); Sale and Servicing Agreement § 4.02.

23                           *Access Rights Under the Insurance Agreement*

24           87. Under the Insurance Agreement, the Servicer is obligated to provide Assured with  
25 “copies of all reports, statements certifications, schedules or other similar items delivered to or by  
26 [IndyMac] . . . pursuant to the terms of the Transaction Documents and, *promptly upon request,*  
27 *such other data as [Assured] may reasonably request.*” Insurance Agreement § 2.03(a)(iii)(c)  
28 (emphasis added).

1           88.     The Insurance Agreement also requires the Servicer to provide Assured with full  
2 access to the Servicer's books and records as they may relate to the servicing obligations under the  
3 2007-H1 Transaction Documents and to OneWest's business, which includes its servicing  
4 business. According to Insurance Agreement Section 2.03(a)(iii)(c):

5                 [The Servicer] *shall*, upon the request of [Assured], *permit*  
6                 [Assured] or its authorized agents, no more than two times per year  
7                 (so long as no Trigger Event has occurred) or following the  
8                 occurrence of a Trigger Event: (A) *to inspect the books and*  
9                 *records of [the Servicer] as they may relate to the Securities, the*  
10                *Mortgage Loans, the obligations of [the Servicer] under the*  
11                *Transaction Documents, the Transaction and, but only following*  
12                the occurrence of a Trigger Event, [the Servicer's] business; (B) to  
13                discuss the affairs, finances and accounts of [IndyMac] with the  
14                senior financial officer of [the Servicer], no more frequently than  
15                annually unless a Trigger Event has occurred; and (C) upon the  
16                occurrence of a Trigger Event, to discuss the affairs, finances and  
17                accounts of [the Servicer] with [the Servicer's] independent  
18                accountants, provided that an officer of [the Servicer] shall have  
19                the right to be present during such discussions.

20 (Emphasis added).

21           89.     Under the Insurance Agreement, a "Trigger Event" occurs when "[Assured] pays a  
22 claim under the Policy." Insurance Agreement Appendix I (definition of "Trigger Event").

23           90.     A Trigger Event has occurred because Assured has paid claims under the Policy.  
24 Accordingly, Assured is entitled to assert and enforce its access and review rights in full as set  
25 forth in Section 2.03(a)(iii)(c) of the Insurance Agreement.

26           91.     As noted above, OneWest pursuant to the Servicing Asset Purchase Agreement  
27 assumed IndyMac's servicing obligations under all the 2007-H1 Transaction Documents that  
28 include servicer duties, including the Insurance Agreement and the Sale and Servicing Agreement.  
The Insurance Agreement provides to Assured important Servicer access and review rights. And  
indeed, the Sale and Servicing Agreement incorporates terms and provisions of the Insurance  
Agreement (*e.g.*, Event of Default under Sale and Servicing Agreement means an Event of Default  
under the Insurance Agreement). Therefore, the Insurance Agreement is a "Contract pursuant to  
which [IndyMac] acts as a Mortgage Loan Servicer," and thus it is a Servicing Agreement under  
the Servicing Asset Purchase Agreement. Servicing Asset Purchase Agreement § 1.01.



1 Consequently, OneWest is obligated to comply with the access and review rights granted to  
2 Assured in the Insurance Agreement.

3 92. OneWest's obligation to comply with Assured's access and review rights is not  
4 excused by the Servicing Asset Purchase Agreement's general exclusion of the assumption of  
5 liability by OneWest from "any stand-alone insurance and indemnity agreements" between  
6 IndyMac and any Bond Insurer. *See id.* §2.04(o). Assured bargained for and obtained in the  
7 Insurance Agreement broad access and review rights of the Servicer and the 2007-H1 Mortgage  
8 Loan files. The access and review rights given to Assured in consideration for its agreement to  
9 provide insurance for the 2007-H1 Transaction are essential and are rights typically granted to the  
10 insurers of mortgage-backed securities given that the servicing of mortgage loans has a direct  
11 effect on the amount of claims ultimately paid by the insurer.

12 93. Indeed, IndyMac's obligations under the Insurance Agreement are expressly  
13 binding upon the Servicer and pass with any servicing transfer. Section 4.02(b) of the Insurance  
14 Agreement provides that "any and all others who are now *or may become liable* for all or *part of*  
15 *the obligations of* the Depositor, [IndyMac ABS], the Company [IndyMac], or the Trust *under this*  
16 *Agreement or any other Transaction Document agree to be bound by this Agreement.*" (Emphasis  
17 added). As defined in the Insurance Agreement, the term "Transaction Document" means, in  
18 addition to the Insurance Agreement, "the Indenture, the Trust Agreement, the Administration  
19 Agreement, the Mortgage Loan Purchase Agreement, the Sale and Servicing Agreement and the  
20 Premium Letter." Insurance Agreement, Appendix I, Definitions, at 46. Since OneWest  
21 indisputably has assumed IndyMac's servicing obligations under the Sale and Servicing  
22 Agreement, it also is required to comply with IndyMac's obligations in the Insurance Agreement.

23 94. The primary purpose of the Servicing Asset Purchase Agreement was to transfer  
24 IndyMac's servicing portfolio, along with IndyMac's servicing obligations, to OneWest.  
25 Therefore, all servicing obligations, even if included in an insurance and indemnity agreement like  
26 the Insurance Agreement, were also assumed by OneWest. Assured's access and review rights are  
27 rights directly related to servicing of the Mortgage Loans. Reading the Servicing Asset Purchase  
28 Agreement as a whole, OneWest assumed the obligation to comply with Assured's access and

1 review rights in the Insurance Agreement and it cannot legitimately refuse to comply with the  
2 servicing obligations included in the Insurance Agreement, including Assured's access and review  
3 rights.

4 *Access Rights Under the Sale and Servicing Agreement*

5 95. In addition to the Insurance Agreement, the Sale and Servicing Agreement  
6 obligates OneWest to "cooperate in all respects with any reasonable request by [Assured] for  
7 action to preserve or enforce the Insurer's rights or interests under this Agreement." Sale and  
8 Servicing Agreement § 4.02. Assured's continuing access to Servicer records is necessary to  
9 preserve and enforce its rights under the Sale and Servicing Agreement, especially in light of the  
10 hundreds of millions of dollars it has been forced to pay to cover missed payments on the  
11 Mortgage Loans; the access and review rights were expressly provided for in the 2007-H1  
12 Transaction Documents as a condition to Assured's issuance of the Policy. Assured cannot  
13 preserve and enforce its rights under the Sale and Servicing Agreement if it cannot access and  
14 review the files, records and documents relating to the Mortgage Loans.

15 96. The Sale and Servicing Agreement additionally makes clear that the Mortgage  
16 Loan files are the property of the Trust. *See id.* § 2.01(a). OneWest, as the Servicer, has no  
17 ownership interest in the Mortgage Loans, but is merely a service provider, acting on behalf of,  
18 and for the benefit of, the Trust. *See id.* §§ 3.01(a), 3.08, 10.07. As such, OneWest has no  
19 legitimate basis to refuse access to files and information with respect to property that it does not  
20 own.

21 *Access Rights Under the Servicing Asset Purchase Agreement*

22 97. OneWest additionally assumed the obligation to provide Assured access to and a  
23 review of the files, records and documents relating to the Mortgage Loans pursuant to the  
24 Servicing Asset Purchase Agreement. *See* Servicing Asset Purchase Agreement § 10.13.  
25 (OneWest agrees to provide Assured with "such access to information and personnel . . . as  
26 [OneWest] is required to provide . . . in accordance with the applicable Servicing Agreement.")

27 98. Section 2.03(a)(iii)(c) of the Insurance Agreement, Section 4.02 of the Sale and  
28 Servicing Agreement and Section 10.13 of the Servicing Asset Purchase Agreement make clear

1 that Assured has the right to access and review OneWest's books and records relating to the 2007-  
2 H1 Mortgage Loans.

3 *Assured Seeks to Conduct a Servicer and Loan File Review*

4 99. Assured's claim payments on the 2007-H1 Transaction had reached levels of over  
5 \$5 million per month by early 2010. A Trigger Event occurs when Assured pays a claim on the  
6 Policy, as explained above.

7 100. Given the significant payments that Assured was making and the unreimbursed  
8 policy draws, Assured informed OneWest on March 25, 2010 that it intended to conduct a servicer  
9 and loan-file review for the 2007-H1 Transaction. As part of the review, Assured specifically  
10 requested access to information regarding the status and collection efforts for 180+ day delinquent  
11 or charged-off Mortgage Loans. However, OneWest responded with an outright refusal to allow  
12 Assured any access to its books, records, documents, and data related to the Mortgage Loans or  
13 otherwise to cooperate with Assured. Instead, it referred Assured to OneWest's investor website  
14 for information about the Mortgage Loans.

15 101. Because of OneWest's refusal to cooperate, Assured initiated discussions with the  
16 FDIC on or about January 31, 2011 regarding transferring servicing of the Mortgage Loans in the  
17 2007-H1 Securitization from OneWest to a new servicer. On February 24, 2011, Assured  
18 requested that OneWest provide the FDIC with information about the 2007-H1 Mortgage Loans to  
19 facilitate those discussions. OneWest failed to provide the requested Mortgage Loan information.

20 102. Even though OneWest continues to act as the Servicer for the 2007-H1 Transaction  
21 and continues to collect significant fees in connection with its servicing role, it still refuses to  
22 permit Assured to access and review the books, records, documents, data, and information relating  
23 to the Mortgage Loans in the 2007-H1 Transaction in direct contravention to the relevant  
24 agreements.

25 2. OneWest's Refusal to Honor Assured's Access and Review Rights of the  
26 Records and Documents Relating to the 2007-HOA1 Mortgage Loans

27 103. The Pooling and Servicing Agreement expressly requires that the Servicer afford  
28 Assured certain access and review rights.

1           104. The Pooling and Servicing Agreement grants Assured nearly unrestricted and  
2 unconditioned rights to access and review all documents relating to the Mortgage Loans and the  
3 Pooling and Servicing Agreement. Section 3.08 of the Pooling and Servicing Agreement  
4 provides:

5           The Servicer shall afford . . . the Certificate Insurer . . . reasonable  
6 access to all records and documentation regarding the Mortgage  
7 Loans and all accounts, insurance information and other matters  
8 relating to this Agreement, such access being afforded without  
charge, but only upon reasonable request and during normal  
business hours at the office designated by the Servicer.

9           105. Section 10.09 of the Pooling and Servicing Agreement provides Assured with full  
10 inspection and audit rights:

11           The Servicer agrees that, on reasonable prior notice, it will permit  
12 any representative of the . . . Certificate Insurer . . . during the  
13 Servicer's normal business hours, *to examine all the books of*  
14 *account, records, reports and other papers of the Servicer relating*  
15 *to the Mortgage Loans, to make copies and extracts therefrom, to*  
16 *cause such books to be audited by independent certified public*  
17 *accountants selected by the Depositor or the Trustee and to discuss*  
18 *its affairs, finances and accounts relating to the Mortgage Loans*  
19 *with its officers, employees and independent public accountants*  
20 *(and by this provision the Servicer hereby authorizes said*  
21 *accountants to discuss with such representative such affairs, finances*  
22 *and accounts), all at such reasonable times and as often as may be*  
23 *reasonably requested.*

24 (Emphasis added). As provided above, as long as Assured provides OneWest with reasonable  
25 prior notice, OneWest must provide Assured with access to "all the books of account, records,  
26 reports and other papers of [OneWest] relating to the Mortgage Loans [and permit Assured] to  
27 make copies and extracts therefrom . . . as often as may be reasonably requested."

28           106. The Pooling and Servicing Agreement additionally makes clear that the Mortgage  
Loan files are the property of the Trustee. See Pooling and Servicing Agreement §§ 2.01, 2.02,  
3.13 & 3.14 ("All Mortgage Files . . . held by, or under the control of, the Servicer in respect of  
any Mortgage Loans . . . shall be held by the Servicer for an on behalf of the Trustee and shall be  
and remain the sole and exclusive property of the Trustee . . ."). OneWest, as the Servicer, has  
no ownership interest in the Mortgage Loans, but is merely a service provider, acting on behalf of,

1 and for the benefit of, the Trust. *See id.* §§ 3.01(a). As such, OneWest has no legitimate basis to  
2 refuse access to files and information with respect to property that it does not own.

3 107. Pursuant to its access and review rights under Pooling and Servicing Agreement  
4 Sections 3.08 and 10.09, Assured first notified OneWest on or about March 25, 2010 that it  
5 intended to conduct a servicer and loan-level review of the 2007-HOA1 Transaction. Assured  
6 specifically requested essential information regarding the status and collection efforts for charged  
7 off and delinquent Mortgage Loans.

8 108. On April 26, 2010, OneWest informed Assured that it would not permit Assured to  
9 conduct a meaningful review. OneWest refused to allow Assured to conduct a servicer review or  
10 to provide Assured with the requested information. OneWest agreed to provide access to limited  
11 "loan level information."

12 109. Thereafter, Assured repeatedly reasserted its request for a servicer review and  
13 access to the requested information, noting that Sections 3.08 and 10.09 of the Pooling and  
14 Servicing Agreement provide Assured with such rights.

15 110. OneWest continued to refuse to permit Assured access to the requested information  
16 in contravention of the Pooling and Servicing Agreement, taking the incorrect position that  
17 Section 10.09 of the Pooling and Servicing Agreement applies only to the financial records of the  
18 Servicer. In a July 8, 2010 letter, OneWest referred Assured to its investor website, and promised  
19 to provide Assured with only limited access to loan-level information.

20 111. After OneWest's repeated refusal to comply with its obligations under the Pooling  
21 and Servicing Agreement and to allow Assured access to the requested information, on or about  
22 April 27, 2011, Assured's outside counsel again informed OneWest that Assured intended to  
23 conduct a complete review of all documents, books, and records related to the 2007-HOA1  
24 Mortgage Loans. Assured emphasized that Section 10.09 of the Pooling and Servicing Agreement  
25 provided Assured with such rights and is not limited to the Servicer's financial records. Rather, as  
26 Assured noted, Section 10.09 expressly gives Assured the right "to examine all the books of  
27 account, records, reports and other papers of the Servicer relating to the Mortgage Loans."

28 Assured additionally requested that OneWest make its officers and employees available to discuss

1 information related to the Mortgage Loans pursuant to Section 10.09 of the Pooling and Servicing  
2 Agreement.

3 112. Assured's April 27, 2011 letter also set forth Assured's concern with OneWest's  
4 Regulation AB Report dated March 4, 2011, in which OneWest and its independent auditor, PwC,  
5 had acknowledged and attested to OneWest's material noncompliance with certain servicing  
6 criteria in Regulation AB that were also included as part of the servicing requirements in the  
7 Pooling and Servicing Agreement.

8 113. OneWest responded to the April 27, 2011 letter on or about June 8, 2011, agreeing  
9 after those six weeks to allow Assured to conduct only a narrower loan-level review of the  
10 Mortgage Loans than required by the Pooling and Servicing Agreement. OneWest refused to  
11 confirm that the records available would contain the information requested by Assured and refused  
12 to provide Assured with access to its electronic servicing system. OneWest also refused to allow  
13 Assured to conduct a servicer review for the 2007-HOA1 Transaction and agreed to provide  
14 access to only limited information included in the credit and servicing files for the Mortgage  
15 Loans in direct contravention to the broad access and review rights granted to Assured in the  
16 Pooling and Servicing Agreement.

17 114. Because OneWest's proposal did not comply with OneWest's obligations and  
18 Assured's rights under the Pooling and Servicing Agreement, Assured sought to transfer servicing  
19 of the 2007-HOA1 Transaction. The parties attempted to negotiate a voluntary transfer of  
20 servicing for the 2007-HOA1 Transaction until approximately August 2011, but were unable to  
21 reach agreement due to the patently unreasonable positions that OneWest took in the negotiations.

22 115. On or about March 10, 2012, OneWest provided Assured with its most recent  
23 Regulation AB Report. As detailed above, like the Regulation AB Report from 2011, OneWest  
24 and PwC reported that OneWest continued to be in material noncompliance with the servicing  
25 criteria in Regulation AB, the Pooling and Servicing Agreement and Sale and Servicing  
26 Agreement. But OneWest now was in material noncompliance with three servicing requirements  
27 rather than just one servicing requirement.

28

1 116. After receiving the March 10, 2012 Regulation AB Report, in which multiple areas  
2 of noncompliance were identified, Assured again wrote to OneWest on March 28, 2012 to renew  
3 its request to review OneWest's files and records relating to the 2007-HOA1 Mortgage Loans.

4 117. OneWest responded by e-mail to Assured's request on April 23, 2012. OneWest  
5 agreed to allow Assured to conduct a loan file review, but only subject to several unreasonable  
6 conditions, none of which are permitted under the Pooling and Servicing Agreement or industry  
7 standards. OneWest did not agree to permit Assured to conduct a servicer review and agreed to  
8 make its employees available to respond to questions in connection with the loan file review only  
9 if Assured provided its questions in writing in advance of any discussions.

10 118. Assured advised OneWest shortly thereafter, on April 26, 2012, that OneWest's  
11 conditions to permitting Assured to conduct a review of the files and documents related to the  
12 Mortgage Loans were unreasonable and violated Assured's audit rights under the Pooling and  
13 Servicing Agreement. Assured again offered to discuss a reasonable compromise.

14 119. OneWest responded on May 7, 2012, and continued to refuse to allow Assured to  
15 conduct a meaningful review of all of OneWest's records and documents relating to the Mortgage  
16 Loans in the 2007-HOA1 Transaction. Instead, OneWest reiterated that it would permit Assured  
17 access to loan files only if Assured agreed to numerous unreasonable conditions. Among other  
18 things, OneWest (a) refused to allow the review to take place until August 28, 2012 (almost four  
19 months from the date of OneWest's letter and five months from the date of Assured's request); (b)  
20 allowed Assured only two days to complete its review; (c) permitted Assured to access and review  
21 loan files only from a sampling of Mortgage Loans and only if Assured provided a list of the  
22 Mortgage Loans it wished to review at least sixty days prior to the review; (d) refused to allow  
23 Assured to conduct a servicer review; (e) refused to allow Assured access to information and  
24 documents regarding the Mortgage Loans on OneWest's servicing system or network; and (f)  
25 refused to allow Assured to use its printers. OneWest's May 7, 2012 letter continued to confirm  
26 that OneWest has no intention of complying with its obligations under the Pooling and Servicing  
27 Agreement.

28

1           **C.   OneWest's Refusal to Continue Funding HELOC Draws Post-Transfer,**  
2           **Effectively Precluding Assured from Exercising Its Rights to Terminate**  
3           **OneWest as Servicer**

4                     *Assured's Effort to Terminate OneWest as Servicer of the 2007-H1*  
5                     *Mortgage Loans*

6           120.   The Sale and Servicing Agreement provides Assured with express Servicer  
7 termination rights. Pursuant to Section 7.01(b) of the Sale and Servicing Agreement, Assured can  
8 direct the Indenture Trustee to terminate "the rights and responsibilities of the Servicer" "upon the  
9 occurrence of any Insurance Agreement Event of Default." The Sale and Servicing Agreement  
10 defines an Insurance Agreement Event of Default as an Event of Default under the Insurance  
11 Agreement. Under the Insurance Agreement, an Event of Default occurs when "any draw is made  
12 under the Policy and remains unreimbursed for 90 days." Insurance Agreement § 5.01(d). An  
13 Event of Default has occurred because draws have been made under the Policy that have gone  
14 unreimbursed for 90 days. In fact, by early 2010, Assured's claim payments on the 2007-H1  
15 Transaction had reached levels of over \$1.5 million per month and Draws made under the Policy  
16 had gone unreimbursed for more than 90 days, triggering an Insurance Agreement Event of  
17 Default that has continued, unabated, to this day.

18           121.   Deutsche Bank, the Indenture Trustee of the 2007-H1 Transaction, notified  
19 OneWest at the direction of Assured by letter dated April 27, 2011 that OneWest was terminated  
20 as Servicer effective June 1, 2011, pursuant to Assured's termination rights under Section 7.01(b)  
21 of the Sale and Servicing Agreement and Section 5.01(d) of the Insurance Agreement. Assured  
22 separately informed OneWest of its direction to Deutsche Bank to terminate OneWest as Servicer,  
23 and stated that it was willing to proceed with a negotiated transfer of servicing and proposed terms  
24 for the transfer. Due to resulting negotiations between OneWest and Assured for a voluntary  
25 transfer of the 2007-H1 Transaction, and as an accommodation to OneWest, Deutsche Bank  
26 notified OneWest at the direction of Assured by a subsequent letter dated May 31, 2011, that the  
27 June 1, 2011 termination would be delayed until August 1, 2011, pending the outcome of such  
28 negotiations. Finally, since negotiations with OneWest were progressing more slowly than



1 anticipated and as further accommodation to OneWest, Deutsche Bank notified OneWest at the  
2 direction of Assured by letter dated July 28, 2011, that Deutsche Bank was rescinding the August  
3 1, 2011 termination.

4 122. Ultimately, despite months of negotiations, OneWest rejected Assured's proposed  
5 terms for a negotiated transfer of servicing in late October 2011. This notwithstanding, OneWest  
6 did not and has not disputed that Assured may unilaterally terminate OneWest as Servicer of the  
7 2007-H1 Transaction and transfer servicing of the 2007-H1 Mortgage Loans under the 2007-H1  
8 Transaction Documents because an Insurance Agreement Event of Default has occurred. And yet,  
9 OneWest effectively prevented, and continues to prevent, the termination by taking the position  
10 that, post termination, it does not have the obligation to and will not continue to honor its  
11 obligation to fund the HELOC Draws made by borrowers of the 2007-H1 Mortgage Loans.

12 *OneWest's Continuing Obligation to Fund the HELOC Draws*

13 123. The Mortgage Loan Purchase Agreement contemplates that each Mortgage Note  
14 permits "the related Mortgagor to make Draws against its Mortgage Loan." Mortgage Loan  
15 Purchase Agreement § 2.03(b). The Mortgage Loan Purchase Agreement inures to the benefit of  
16 and is enforceable by Assured. *See id.* § 6.08.

17 124. Under the terms of the Mortgage Loan Purchase Agreement, IndyMac conveyed  
18 the Mortgage Loans to IndyMac ABS (the Depositor), including the Draws taken on the Mortgage  
19 Loans by borrowers. Notwithstanding the transfer of the Mortgage Loans by IndyMac, as Seller,  
20 to the Depositor and to the Trust, IndyMac or its assignee, retained the obligation to fund Draws.  
21 *See id.* §§ 2.01 and 2.03(b). IndyMac ABS retained the obligation to purchase the Draws funded  
22 by IndyMac. *See id.* Assured is informed and believes that the FDIC, as Receiver of IndyMac  
23 and IndyMac ABS, assumed these obligations.

24 125. Through the Servicing Asset Purchase Agreement, the FDIC delegated to OneWest  
25 its funding obligation across multiple IndyMac securitizations that included a funding obligation,  
26 including the 2007-H1 Transaction, and OneWest assumed that obligation. *See* Servicing Asset  
27 Purchase Agreement § 10.06. Though it does not dispute that it agreed under the Servicing Asset  
28 Purchase Agreement to fund Draws, OneWest claims that Assured cannot enforce OneWest's

1 obligation to fund the Draws because Assured is not a party to nor an intended beneficiary of the  
2 Servicing Asset Purchase Agreement.

3 126. OneWest's obligation under the Servicing Asset Purchase Agreement, however,  
4 only exists if it assumed the obligation of IndyMac to fund Draws pursuant to the Mortgage Loan  
5 Purchase Agreement, since the only agreement in the 2007-H1 Transaction requiring the funding  
6 of Draws against the 2007-H1 Mortgage Loans is the Mortgage Loan Purchase Agreement. And,  
7 OneWest has been performing its obligation to fund Draws as required by the Mortgage Loan  
8 Purchase Agreement since it took over as Servicer on or about the second quarter of 2009.

9 *OneWest's Threat to Cease Funding Draws If It Is Terminated as Servicer*

10 127. Termination of the Servicer terminates *only* OneWest's rights and obligations in its  
11 capacity as Servicer under the Sale and Servicing Agreement. Section 7.01(b) of the Sale and  
12 Servicing Agreement specifies, in pertinent part: "upon the direction of the Insurer...the Indenture  
13 Trustee shall terminate the rights and responsibilities of the Servicer *hereunder* [that is, only those  
14 under the Sale and Servicing Agreement] and shall appoint a successor Servicer in accordance  
15 with the provisions of Section 7.02 [of the Sale and Servicing Agreement]." (Emphasis added).  
16 Section 7.02 of the Sale and Servicing Agreement specifies, in pertinent part: "the...successor  
17 Servicer...shall be the successor in all respects to the Servicer *in its capacity as servicer under this*  
18 *Agreement* [that is, only under the Sale and Servicing Agreement] and the transactions set forth or  
19 provided for herein and shall be subject to all the responsibilities, duties and liabilities relating  
20 thereto placed on the Servicer *by the terms and provisions hereof*." (Emphasis added).  
21 Termination of the Servicer does not terminate OneWest's other obligations under the 2007-H1  
22 Transaction Documents and the Servicing Asset Purchase Agreement. Thus, even after  
23 termination of OneWest as Servicer under the Sale and Servicing Agreement, OneWest retains all  
24 non-servicing obligations under the other 2007-H1 Transaction Documents that it assumed under  
25 the 2007-H1 Transaction Documents and the Servicing Asset Purchase Agreement, including its  
26 obligation to continue funding Draws.

27 128. It was not until OneWest was faced with Assured's clear termination rights and an  
28 imminent transfer of servicing of the 2007-H1 Mortgage Loans, that OneWest threatened in a June

1 17, 2011 letter to stop funding Draws on the 2007-H1 HELOCs if Assured were to exercise its  
2 undisputed termination rights. OneWest did this in contravention of its continuing obligation to  
3 fund Draws under Section 2.03(b) of the Mortgage Loan Purchase Agreement, which obligation  
4 OneWest assumed under Section 10.06 of the Servicing Asset Purchase Agreement, and contrary  
5 to OneWest's consistent practice since on or about the second quarter of 2009 of funding the  
6 Draws under the Mortgage Loan Purchase Agreement and Servicing Asset Purchase Agreement.  
7 No provision in any relevant agreement permits OneWest to discontinue funding the Draws if  
8 OneWest is terminated as Servicer, and OneWest has not been able to identify any such provision.

9 129. Nonetheless, OneWest improperly contends that it is not bound by the obligation to  
10 fund Draws post-termination. OneWest also contends that although it agreed to fund Draws  
11 pursuant to the Servicing Asset Purchase Agreement, Assured is not a party to the Servicing Asset  
12 Purchase Agreement and is not an intended beneficiary. Even though the cost to OneWest in  
13 continuing to fund Draws post termination would be de minimis due to the fact that the FDIC  
14 currently reimburses OneWest for the Draws it funds and on information and belief would  
15 continue to do so even were OneWest terminated as Servicer, OneWest nevertheless relies on  
16 purported "loopholes" in the agreements for no apparent reason other than for the malicious and  
17 vindictive purpose of frustrating Assured's Servicer termination rights.

18 130. Given OneWest's threats, Assured continued to seek OneWest's cooperation for a  
19 voluntary transfer of servicing between May and November 2011. However, due to OneWest's  
20 continuing insistence on unreasonable terms and conditions in the agreements intended to  
21 memorialize the voluntary transfer, Assured and OneWest were unable to so much as execute a  
22 non-binding letter of intent with respect to such transfer. Hence, OneWest, had essentially  
23 adopted a two-pronged strategy to intentionally frustrate the transfer of servicing: (i) a six-month  
24 stonewalling campaign of negotiating in bad faith with respect to the voluntary transfer; and (ii) an  
25 express refusal to continue funding Draws for the 2007-H1 Transaction, knowing that a transfer of  
26 servicing would effectively be impossible to effect if the Draws were no longer funded by  
27 OneWest.

28

1           131. Were OneWest's incorrect interpretation of its obligations under the Servicing  
2 Asset Purchase Agreement and the Mortgage Loan Purchase Agreement to be given effect,  
3 Assured effectively would have no right to terminate OneWest as Servicer for OneWest's failure  
4 to service the Mortgage Loans in a prudent manner and according to the requirements in the Sale  
5 and Servicing Agreement and industry standards. If OneWest can effectively prevent its  
6 termination as Servicer by refusing to honor its obligation to fund Draws, Assured will be forced  
7 to continue paying claims on the Mortgage Loans that are not being properly serviced pursuant to  
8 the Sale and Servicing Agreement and industry standards. OneWest obtained IndyMac's valuable  
9 servicing rights and obligations and the right to collect fees for the servicing of the Mortgage  
10 Loans in exchange for assuming IndyMac's servicing and funding obligations. Yet, OneWest  
11 apparently now believes it can engage in shoddy and deficient servicing without consequence; that  
12 it can unilaterally refuse to comply with its funding obligations (obligations it has complied with  
13 for over three years) under the Servicing Asset Purchase Agreement and the Mortgage Loan  
14 Purchase Agreement upon its termination as Servicer based on a perceived (but erroneous)  
15 technicality in the documents by which it became the successor to IndyMac.

16           132. As a result of OneWest's continuing refusal to acknowledge its ongoing obligation  
17 to fund Draws under the 2007-H1 Transaction Documents post servicing transfer, Assured has  
18 been unable to transfer servicing. Assured continues to have to make insurance payments in an  
19 approximate amount of \$2 million per month with respect to the 2007-H1 Transaction. Assured  
20 believes that a transfer of servicing would result in a significant improvement in performance and  
21 therefore a significant reduction in policy claim payments to be made by Assured.

22                           **FIRST CAUSE OF ACTION**

23                   **(Against OneWest for Breach of Contract Regarding Servicing Requirements)**

24           133. Assured incorporates by reference and realleges each and every allegation as set  
25 forth above in paragraphs 1 through 132 as if fully set forth herein.

26           134. The Sale and Servicing Agreement and the Pooling and Servicing Agreement are  
27 valid and enforceable contracts that give rise to certain obligations on the part of OneWest as the  
28

1 successor Servicer to IndyMac as agreed to by OneWest pursuant to the Servicing Asset Purchase  
2 Agreement, the Sale and Servicing Agreement, and the Pooling and Servicing Agreement.

3 135. The Sale and Servicing Agreement and the Pooling and Servicing Agreement  
4 expressly provide that Assured is a third-party beneficiary thereunder.

5 136. To the extent not waived or otherwise excused, Assured complied with all terms  
6 and conditions precedent contained in the Sale and Servicing Agreement and the Pooling and  
7 Servicing Agreement.

8 137. The Sale and Servicing Agreement and the Pooling and Servicing Agreement  
9 require OneWest to service the Mortgage Loans in accordance with the Servicing Requirements  
10 set forth in those agreements, including but not limited to conducting loss mitigation efforts,  
11 engaging in foreclosure practices, effectively overseeing subcontractors, and appropriately  
12 managing custodial accounts in accordance with the terms of the Sale and Servicing Agreement  
13 and/or the Pooling and Servicing Agreement.

14 138. OneWest has breached and is continuing to breach its contractual requirements in  
15 the Sale and Servicing Agreement and the Pooling and Servicing Agreement by failing to service  
16 the Mortgage Loans in the Transactions in accordance with those agreements and industry  
17 standards.

18 139. As a result of OneWest's breaches of contract, Assured has suffered damages in an  
19 amount not yet fully ascertained, but at least equal to the principal and interest payments Assured  
20 has had to make under the Policies for the Transactions since March 19, 2009.

21 **SECOND CAUSE OF ACTION**

22 **(Against OneWest for Breach of Contract Regarding Access to and Review of the Records**  
23 **and Documents Relating to the Mortgage Loans in the Transactions)**

24 140. Assured incorporates by reference and realleges each and every allegation as set  
25 forth above in paragraphs 1 through 139 as if fully set forth herein.

26 141. The Sale and Servicing Agreement, the Insurance Agreement, and the Pooling and  
27 Servicing Agreement are valid and enforceable contracts that give rise to certain obligations on the  
28 part of OneWest as the successor Servicer to IndyMac as agreed to by OneWest pursuant to the

1 Servicing Asset Purchase Agreement, the Insurance Agreement, the Sale and Servicing  
2 Agreement, and the Pooling and Servicing Agreement.

3 142. The Sale and Servicing Agreement and the Pooling and Servicing Agreement  
4 expressly provide that Assured is a third-party beneficiary thereunder. Assured is a party to the  
5 Insurance Agreement.

6 143. To the extent not waived or otherwise excused, Assured complied with all terms  
7 and conditions precedent contained in the Sale and Servicing Agreement, the Insurance  
8 Agreement, and the Pooling and Servicing Agreement.

9 *2007-H1 Access and Audit Rights*

10 144. The Insurance Agreement and Sale and Servicing Agreement require OneWest as  
11 Servicer, among other things, to provide Assured with access to OneWest's books and records  
12 related to the 2007-H1 Mortgage Loans and the obligations of OneWest under the Transaction  
13 Documents, among other things. Assured is also entitled to access OneWest's books and records  
14 regarding OneWest's "business," which includes its servicing business.

15 145. OneWest also is required under the Insurance Agreement to make its senior  
16 financial officer and its independent accountants available to discuss with Assured OneWest's  
17 affairs, finances and accounts.

18 146. The Sale and Servicing Agreement further obligates OneWest to cooperate with  
19 any reasonable request by Assured to review the files, books, records, and documents related to  
20 the 2007-H1 Mortgage Loans if the request is made to preserve and enforce Assured's rights under  
21 the Sale and Servicing Agreement.

22 147. Because of the significant payments Assured has had to make in connection with  
23 the 2007-H1 Transaction, and the adverse findings specified in the Regulation AB Reports and the  
24 OTC Report, Assured's request to conduct a loan file and servicing review is reasonable and  
25 clearly made in an effort to preserve and enforce its rights under the Sale and Servicing  
26 Agreement.

27 148. OneWest has breached and is continuing to breach its contractual obligations in the  
28 Insurance Agreement and Sale and Servicing Agreement by refusing to comply with Assured's

1 reasonable request to access and review OneWest's books, records and documents related to the  
2 2007-H1 Mortgage Loans and OneWest's Servicing obligations, and to interview OneWest's  
3 senior financial officer and independent accountants.

4 *2007-HOA1 Access and Audit Rights*

5 149. The Pooling and Servicing Agreement requires OneWest, among other things, to  
6 provide Assured with reasonable access to all records and documentation regarding the 2007-  
7 HOA1 Mortgage Loans and all accounts, insurance information and other matters relating to the  
8 Pooling and Servicing Agreement.

9 150. The Pooling and Servicing Agreement also requires OneWest to allow Assured to  
10 examine all the books of account, records, reports and other papers relating to the 2007-HOA1  
11 Mortgage Loans and make copies, including electronic copies, thereof. OneWest is also obligated  
12 to make its officers, employees and public accountants available to discuss with Assured  
13 OneWest's affairs, finances and accounts relating to the 2007-HOA1 Mortgage Loans.

14 151. OneWest has breached and is continuing to breach its contractual requirements in  
15 the Pooling and Servicing Agreement by refusing to comply with Assured's repeated requests to  
16 conduct a loan file and servicing review pursuant to the Pooling and Servicing Agreement.

17 152. As a result of OneWest's breaches of contract, Assured has suffered damages in an  
18 amount not yet fully ascertained, but at least equal to the principal and interest payments Assured  
19 has had to make under the Insurance Policies for the Transactions since March 19, 2009.

20 **THIRD CAUSE OF ACTION**

21 **(Against OneWest for Specific Performance Regarding Access to and Review of the Records**  
22 **and Documents Relating to the Mortgage Loans in the Transactions)**

23 153. Assured hereby incorporates by reference and realleges each and every allegation  
24 as set forth above in paragraphs 1 through 152 as if fully set forth herein.

25 *2007-H1 Access and Audit Rights*

26 154. The Insurance Agreement and the Sale and Servicing Agreement are valid and  
27 enforceable contracts with adequate consideration given by the parties, and all conditions  
28 precedent to their enforcement have been performed by Assured.

1           155. Under the Insurance Agreement and the Sale and Servicing Agreement, OneWest is  
2 required to provide Assured with access to OneWest's books, records and documents related to the  
3 2007-H1 Mortgage Loans and OneWest's Servicing obligations, among other things, and as often  
4 as requested by Assured once a Trigger Event has occurred. A Trigger Event has occurred  
5 because Assured has paid claims under the Policy, among other things. Because a Trigger Event  
6 has occurred, OneWest also is required under the Insurance Agreement to make its senior financial  
7 officer and its independent accountants available to Assured to discuss OneWest's affairs, finances  
8 and accounts.

9           156. OneWest is further required to cooperate with Assured's reasonable request to  
10 conduct a loan file and servicing review because Assured's request is made to preserve and  
11 enforce Assured's rights under the Sale and Servicing Agreement.

12           157. OneWest has breached the Insurance Agreement and the Sale and Servicing  
13 Agreement by refusing (a) to allow Assured access to all books, records and documents relating  
14 the 2007-H1 Mortgage Loans, OneWest's Servicing obligations, and OneWest's business; (b) to  
15 allow Assured access to and a review of requested Mortgage Loan data, including information for  
16 the status and collection efforts for charged-off and delinquent Mortgage Loans; (c) to allow  
17 Assured to discuss OneWest's affairs, finances and accounts with OneWest's senior financial  
18 officer and its independent accountants; and (d) to cooperate with Assured in Assured's  
19 preservation and enforcement of its rights under the Insurance Agreement and the Sale and  
20 Servicing Agreement by allowing Assured to conduct a loan file and servicing review.

21           158. The provisions granting Assured access to and review of OneWest's records and  
22 information regarding the 2007-H1 Mortgage Loans are unique. Assured has no adequate remedy  
23 at law because damages are difficult to estimate and are inadequate to remedy OneWest's breach  
24 of the access and review of documents under the Insurance Agreement and the Sale and Servicing  
25 Agreement.



2007-HOA1 Access and Audit Rights

159. The Pooling and Servicing Agreement is a valid and enforceable contract with adequate consideration given by the parties, and all conditions precedent to its enforcement have been performed by Assured.

160. Under the Pooling and Servicing Agreement, OneWest as assignee and/or successor servicer to IndyMac is required to allow Assured reasonable access to all records and documentation regarding the 2007-HOA1 Mortgage Loans and all accounts, insurance information and other matters relating to the Pooling and Servicing Agreement itself. OneWest also is required under the Pooling and Servicing Agreement to allow Assured to examine all of the books of account, records, reports and other papers relating to the 2007-HOA1 Mortgage Loans and make copies, including electronic copies, thereof. OneWest is also obligated to make its officers, employees and public accountants available to discuss with Assured OneWest's affairs, finances and accounts related to the 2007-HOA1 Mortgage Loans.

161. OneWest has breached the Pooling and Servicing Agreement by refusing (a) to allow Assured access to all records and documentation regarding the 2007-HOA1 Mortgage Loans; (b) to allow Assured access to all accounts, insurance information and other matters relating to the Pooling and Servicing Agreement; (c) to allow Assured to examine all of the books of account, records, reports and other papers relating to the 2007-HOA1 Mortgage Loans and make copies, including electronic copies thereof; and (d) to allow Assured to discuss OneWest's affairs, finances and accounts relating to the 2007-HOA1 Mortgage Loans with OneWest's officers, employees and public accountants.

162. The provisions granting Assured access to and review of OneWest's records and information regarding the 2007-HOA1 Mortgage Loans and the Pooling and Servicing Agreement are unique. Assured has no adequate remedy at law because damages are difficult to estimate and are inadequate to remedy OneWest's breach of the access and review of documents under the Pooling and Servicing Agreement.

163. Assured is entitled to specific performance of the provisions granting Assured access to and a review of OneWest's records and information regarding the 2007-H1 and 2007-

1 HOA1 Mortgage Loans by order of the Court requiring OneWest to comply with its obligations  
2 under the Insurance Agreement, the Sale and Servicing Agreement, and the Pooling and Servicing  
3 Agreement as detailed in this Complaint.

4 **FOURTH CAUSE OF ACTION**

5 **(Against One West for Specific Performance Regarding the Funding of Draws)**

6 164. Assured incorporates by reference and realleges each and every allegation as set  
7 forth above in paragraphs 1 through 163 as if fully set forth herein.

8 165. The Mortgage Loan Purchase Agreement and the Sale and Servicing Agreement  
9 are valid and enforceable contracts with adequate consideration given by the parties, and all  
10 conditions precedent to their enforcement have been performed by Assured.

11 166. Under the Mortgage Loan Purchase Agreement, One West as delegatee and  
12 assignee of IndyMac's obligations is required to continue funding HELOC draws by borrowers of  
13 the 2007-H1 Mortgage Loans even if OneWest no longer services the Mortgage Loans.

14 167. Under the Sale and Servicing Agreement, One West agreed that in the event of its  
15 termination as Servicer, only its rights and responsibilities under the Sale and Servicing  
16 Agreement would be terminated. One West's funding obligation is not an obligation it undertook  
17 under the Sale and Servicing Agreement. Therefore, One West must continue funding the 2007-  
18 H1 Mortgage Loan Draws.

19 168. One West has threatened that if it is terminated as Servicer, it will immediately  
20 stop funding Draws by the borrowers of the 2007-H1 Mortgage Loans, in breach of its obligations  
21 under the Mortgage Loan Purchase Agreement.

22 169. The provisions that OneWest assumed that require it to fund Draws by borrowers  
23 of the 2007-H1 Mortgage Loans are unique. Assured has no adequate remedy at law because  
24 damages are difficult to estimate and are inadequate to remedy OneWest's threatened immediate  
25 breach of its funding obligation.

26 170. Assured is entitled to specific performance of the provisions in the Mortgage Loan  
27 Purchase Agreement requiring OneWest to fund the HELOC Draws in connection with the 2007-  
28 H1 Mortgage Loans whether or not it is terminated as Servicer, by Order of the Court requiring

1 OneWest to continue funding the HELOC Draws in connection with the 2007-H1 Mortgage  
2 Loans.

3 **FIFTH CAUSE OF ACTION**

4 **(Against OneWest for Declaratory Relief)**

5 171. Assured incorporates by reference and realleges each and every allegation as set  
6 forth above in paragraphs 1 through 170 as if fully set forth herein.

7 *2007-H1 Access and Audit Rights*

8 172. An actual controversy has arisen and now exists between Assured and OneWest  
9 concerning Assured's rights under the Insurance Agreement and the Sale and Servicing  
10 Agreement to review all of OneWest's books, records and documents related to the 2007-H1  
11 Mortgage Loans, the servicing obligations of OneWest, and OneWest's business, which includes  
12 its servicing business, among other things. Specifically, OneWest contends that Assured does not  
13 have the right to access and review its books, records, documents, and data relating to the 2007-H1  
14 Mortgage Loans, OneWest's servicing obligations, and OneWest's business under either the  
15 Insurance Agreement or the Sale and Servicing Agreement because the Insurance Agreement is  
16 not enforceable against OneWest and the Sale and Servicing Agreement does not provide Assured  
17 with any access or audit rights. Assured contends that OneWest is required under the Insurance  
18 Agreement and Sale and Servicing Agreement to provide Assured with access to its books,  
19 records, documents, and data, including information regarding the status and collection efforts for  
20 charged off and delinquent Mortgage Loans, relating to the 2007-H1 Mortgage Loans, OneWest's  
21 servicing obligations, and OneWest's business, and to provide its senior financial officer and  
22 independent accountants to discuss OneWest's affairs, finances and accounts. Assured contends  
23 that OneWest is obligated to permit Assured to conduct a loan file and servicing review of the  
24 2007-H1 Mortgage Loans under the Insurance Agreement and the Sale and Servicing Agreement  
25 because OneWest expressly assumed those obligations under the Servicing Asset Purchase  
26 Agreement. OneWest does not dispute it assumed the servicer obligations under the Sale and  
27 Servicing Agreement, but disputes it is obligated to perform any obligations under the Insurance  
28 Agreement. Assured contends that OneWest is also required to permit Assured to conduct the

1 requested loan file and servicing review under the Insurance Agreement because the Insurance  
2 Agreement expressly states it is a Transaction Document signed by IndyMac in all of its  
3 capacities, including as Servicer, and those servicing obligations are assumed by any successor  
4 Servicer. OneWest agreed in the Servicing Asset Purchase Agreement to assume all of the  
5 Servicer's obligation under "all Contracts (including Pooling and Servicing Agreements) pursuant  
6 to which the Seller acts as a mortgage loan servicer . . . and any other contracts entered into by the  
7 [IndyMac] in its capacity as Servicer in connection with any Securitization Transaction." The  
8 Insurance Agreement is a Contract under the Servicing Asset Purchase Agreement and it was  
9 entered into by IndyMac in its capacity as Servicer of the 2007-H1 Transaction. Assured is  
10 informed and believes and thereon alleges, that OneWest disputes Assured's contentions. An  
11 actual and justiciable controversy therefore exists between Assured and OneWest concerning the  
12 matters alleged herein.

13       173. Assured seeks a judicial declaration confirming that OneWest's contentions are  
14 wrong and that Assured's contentions are correct and that OneWest is required to permit Assured  
15 to conduct a loan file and servicing review of the 2007-H1 Mortgage Loans, including (a) allowing  
16 Assured access to the books, records, documents, data, information regarding the status and  
17 collection efforts for charged off and delinquent 2007-H1 Mortgage Loans, OneWest's servicing  
18 obligations under the 2007-H1 Transaction, and OneWest's business; (b) permitting Assured to  
19 discuss OneWest's affairs, finances and accounts with its senior financial officer and independent  
20 accountants; and (c) allowing Assured to conduct a loan file and servicing review of the 2007-H1  
21 Mortgage Loans.

22                               *2007-HOA1 Access and Audit Rights*

23       174. An actual controversy has arisen and now exists between Assured and OneWest  
24 concerning Assured's rights under the Pooling and Servicing Agreement to review "all records  
25 and documentation regarding the [2007-HOA1] Mortgage Loans and all accounts, insurance  
26 information and other matters relating to [the Pooling and Servicing Agreement]." Specifically,  
27 OneWest contends that Assured does not have the right to access and review all files and  
28 documents relating to the 2007-HOA1 Mortgage Loans and the Pooling and Servicing Agreement.

1 Instead, OneWest maintains that the Pooling and Servicing Agreement provides the right to  
2 review only a narrow subset of documents related to a limited number of the 2007-HOA1  
3 Mortgage Loans and the Pooling and Servicing Agreement. In addition, OneWest has sought to  
4 impose conditions and restrictions on Assured's review of documents and requests to discuss the  
5 servicing of the 2007-HOA1 Mortgage Loans with OneWest employees that are unreasonable and  
6 not included in the Pooling and Servicing Agreement. Assured contends that the Pooling and  
7 Servicing Agreement grants it broad and clear rights to audit OneWest's documents and files  
8 relating to the 2007-HOA1 Mortgage Loans, including the right to discuss OneWest's "affairs,  
9 finances and accounts" related to the 2007-HOA1 Mortgage Loans with OneWest and/or  
10 OneWest's public accountants. Assured is informed and believes and thereon alleges, that  
11 OneWest disputes Assured's contentions. An actual and justiciable controversy therefore exists  
12 between Assured and OneWest concerning the matters alleged herein.

13         175. Assured seeks a judicial declaration confirming that OneWest's contentions are  
14 wrong and that Assured's contentions are correct and that OneWest must honor all of its  
15 obligations under the Pooling and Servicing Agreement, including (a) permitting Assured access  
16 to "all records and documentation regarding all of the Mortgage Loans" in the 2007-HOA1  
17 Transaction; (b) permitting Assured to access "all accounts, insurance information and other  
18 matters" relating to the Pooling and Servicing Agreement; (c) permitting Assured to examine "all  
19 of the books of account, records, reports and other papers of [OneWest] relating to the Mortgage  
20 Loans" and "to make copies and extracts therefrom"; (d) permitting Assured's review to  
21 commence in a timely manner and to last as many days as Assured deems necessary to conduct  
22 and complete the review; (e) not inhibiting Assured's review and copying of files by refusing to  
23 make power sources, printers and copiers available; (f) providing Assured access to the electronic  
24 files maintained in connection with the 2007-HOA1 Mortgage Loans, including access to the  
25 information regarding all of the 2007-HOA1 Mortgage Loans on OneWest's electronic servicing  
26 system or computer network; (g) providing Assured access to documents and information  
27 regarding all of the 2007-HOA1 Mortgage Loans; (h) making its employees, officers and  
28 independent accountants available to "discuss [OneWest's] affairs, finances and accounts relating

1 to the [2007-HOA] Mortgage Loans . . . at such reasonable times and as often as requested"; (i)  
2 not imposing unreasonable requests for non-disclosure agreements that seek to force Assured to  
3 indemnify OneWest, waive certain rights and that otherwise impose unreasonable restrictions on  
4 Assured's rights; and (j) not otherwise imposing restrictions and conditions on Assured's access to  
5 and review of the files and documents relating to the 2007-HOA1 Mortgage Loans and the  
6 Pooling and Servicing Agreement that are not agreed to in the Pooling and Servicing Agreement.

7 *2007-H1 Draw Funding Obligations*

8 176. An actual controversy has arisen and now exists between Assured and OneWest  
9 concerning Assured's right to terminate OneWest as Servicer under the Sale and Servicing  
10 Agreement and OneWest's continuing obligation to fund Draws as delegatee and assignee to the  
11 Mortgage Loan Purchase Agreement. Specifically, although OneWest does not dispute Assured's  
12 right to terminate OneWest as Servicer because an Insurance Agreement Event of Default has  
13 occurred, OneWest at the same time contends that its obligation to fund Draws ceases at the time it  
14 is terminated as Servicer to the 2007-H1 Transaction. OneWest also claims that its obligation to  
15 fund Draws is not enforceable by Assured. Assured contends that the Mortgage Loan Purchase  
16 Agreement and the 2007-H1 Transaction Documents allow Assured to enforce the obligation to  
17 fund Draws against any assignee or party that otherwise assumes the obligation to fund Draws.  
18 Assured contends that OneWest is an assignee of IndyMac's obligations under the Mortgage Loan  
19 Purchase Agreement pursuant to its agreement under the Servicing Asset Purchase Agreement to  
20 continue to fund Draws on the Mortgage Loans in the 2007-H1 Transaction. Assured alleges that  
21 OneWest's obligation to fund Draws under the terms of the Mortgage Loan Purchase Agreement  
22 does not cease when it is terminated as Servicer. There are no provisions in the 2007-H1  
23 Transaction Documents allowing for a cessation of the obligation of IndyMac to fund Draws and  
24 there is no provision in the Servicing Asset Purchase Agreement allowing for a cessation of  
25 OneWest's obligation as delegatee and assignee to fund Draws or for the FDIC to cease  
26 reimbursing OneWest for funding Draws. Assured is informed and believes and thereon alleges,  
27 that OneWest disputes Assured's contentions. An actual and justiciable controversy therefore  
28 exists between Assured and OneWest concerning the matters alleged herein.

1 177. Assured seeks a judicial declaration confirming that OneWest's contentions are  
2 wrong and that Assured's contentions are correct and that if Assured terminates OneWest as  
3 Servicer of the 2007-H1 Transaction, OneWest must nonetheless honor all of its delegated and/or  
4 assigned obligations under the Mortgage Loan Purchase Agreement after it is terminated as  
5 Servicer by continuing to fund homeowner Draws against the HELOCs in the 2007-H1  
6 Transaction.

7 178. A declaration is necessary at this time and under these circumstances as to all of the  
8 above in order that the parties' disputes may be resolved and that the parties are aware of their  
9 respective rights and obligations to one another.

10 **PRAYER FOR RELIEF**

11 WHEREFORE Assured prays for judgment on its behalf as follows:

12 1. On the First and Second Causes of Action for breach of contract, damages  
13 according to proof at trial, plus interest;

14 2. On the Third Cause of Action for specific performance, for an order requiring  
15 OneWest (a) to allow Assured access to all books, records and documents relating to the 2007-H1  
16 Mortgage Loans, OneWest's Servicing obligations with respect to the 2007-H1 Mortgage Loans  
17 and OneWest's business; (b) to allow Assured access to and a review of requested 2007-H1  
18 Mortgage Loan data, including information regarding the status and collection efforts for charged  
19 off and delinquent Mortgage Loans; (c) to allow Assured to discuss OneWest's affairs, finances  
20 and accounts with OneWest's senior financial officer and its independent accountants; (d) to  
21 cooperate with Assured in Assured's preservation and enforcement of its rights under the  
22 Insurance Agreement and the Sale and Servicing Agreement by allowing Assured to conduct a  
23 loan file and servicing review; (e) to allow Assured access to all records and documentation  
24 regarding the 2007-HOA1 Mortgage Loans, including information regarding the status and  
25 collection efforts for charged off and delinquent Mortgage Loans; (f) to allow Assured access to  
26 all accounts, insurance information and other matters relating to the Pooling and Servicing  
27 Agreement; (g) to allow Assured to examine all of the books of account, records, reports and  
28 other papers relating to the 2007-HOA1 Mortgage Loans and make copies, including electronic

1 copies thereof; and (e) to allow Assured to discuss OneWest's affairs, finances and accounts  
2 relating to the 2007-HOA1 Mortgage Loans with OneWest's officers, employees and public  
3 accountants.

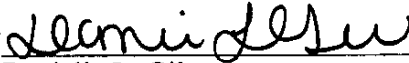
4 3. On the Fourth Cause of Action for specific performance, for an Order requiring  
5 One West to continue funding the Draws by borrowers of the 2007-H1 Mortgage Loans upon its  
6 termination as Servicer of the 2007-H1 Mortgage Loans.

7 4. On the Fifth Cause of Action, for declarations in accord with Assured's contentions  
8 stated above; and

9 5. On all causes of action, such other and further relief as the court may deem just and  
10 proper.

11  
12 DATED: August 9, 2012

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

13  
14  
15 By   
16 Danielle L. Gilmore  
Attorneys for Assured Guaranty Municipal Corp.

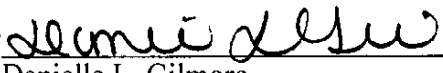


**DEMAND FOR JURY TRIAL**

Assured requests a trial by jury on all issues so triable.

DATED: August 9, 2012

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By   
Danielle L. Gilmore  
Attorneys for Assured Guaranty Municipal Corp.

ORIGINAL

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Danielle L. Gilmore (SBN: 171457) QUINN EMANUEL URQUHART & SULLIVAN, LLP 865 S. Figueroa Street, 10th Floor  Los Angeles, CA 90017-2543 TELEPHONE NO.: 213-443-3000 FAX NO.: 213-443-3100 ATTORNEY FOR (Name): Assured Guaranty Municipal Corp.		FOR COURT USE ONLY  <b>FILED</b> Los Angeles Superior Court  AUG 09 2012  John A. Clarke, Executive Officer/Clerk By <u>SHAUNYA WESLEY</u> Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: 111 N. Hill Street CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central District		
CASE NAME: Assured Guaranty Municipal Corp. v. OneWest Bank, FSB		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	CASE NUMBER: <b>BC 489896</b>  JUDGE: DEPT:
<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input checked="" type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |  |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties  | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): Five
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date:

Danielle L. Gilmore (SBN: 171457)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

ORIGINAL

SHORT TITLE: Assured Guaranty Municipal Corp., v.  
OneWest Bank, FSB

CASE NUMBER

BC 489896

**CIVIL CASE COVER SHEET ADDENDUM AND  
STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

**Item I.** Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☐ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 30 HOURS/ 8 DAYS

**Item II.** Indicate the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

**Step 3:** In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

1. Class actions must be filed in the Stanley Mosk Courthouse, central district.
2. May be filed in central (other county, or no bodily injury/property damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons (See Step 3 Above)
<b>Auto Tort</b>	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
<b>Other Personal Injury/Property Damage/Wrongful Death Tort</b>	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4. 1., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 4.
<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress		1., 3.	
	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 4.	

SHORT TITLE: Assured Guaranty Municipal Corp., v.  
OneWest Bank, FSB

CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons See Step 3 Above
Non-Personal Injury/ Property Damage/ Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input checked="" type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Real Property	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

SHORT TITLE: Assured Guaranty Municipal Corp., v.  
OneWest Bank, FSB

CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons (See Step 3 Above)
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1., 2., 3.
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1., 2., 8.
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
	Miscellaneous Civil Complaints	<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

SHORT TITLE: Assured Guaranty Municipal Corp., v.  
OneWest Bank, FSB

CASE NUMBER

**Item III. Statement of Location:** Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., **Step 3** on Page 1, as the proper reason for filing in the court location you selected.

<b>REASON:</b> Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case.  <input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input checked="" type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.		ADDRESS: 888 East Walnut Street
CITY: Pasadena	STATE: CA	ZIP CODE: 91101

**Item IV. Declaration of Assignment:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Central Civil West courthouse in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subds. (b), (c) and (d)].

Dated: 08/09/2012

  
(SIGNATURE OF ATTORNEY/FILING PARTY)  
Danielle L. Gilmore (SBN 171457)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.