

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

ASSURED GUARANTY MUNICIPAL CORP.,  
f/k/a FINANCIAL SECURITY ASSURANCE  
INC.,

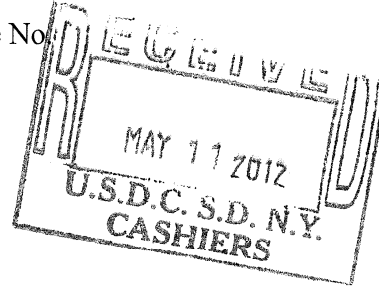
Plaintiff,

vs.

GMAC MORTGAGE, LLC, f/k/a GMAC  
MORTGAGE CORPORATION; RESIDENTIAL  
ASSET MORTGAGE PRODUCTS, INC.; ALLY  
BANK, f/k/a GMAC BANK; RESIDENTIAL  
FUNDING COMPANY, LLC, f/k/a  
RESIDENTIAL FUNDING CORPORATION;  
RESIDENTIAL CAPITAL, L.L.C, f/k/a  
RESIDENTIAL CAPITAL CORPORATION;  
ALLY FINANCIAL, f/k/a GMAC, LLC, and  
RESIDENTIAL FUNDING MORTGAGE  
SECURITIES II, INC.,

Defendants.

Case No.



**COMPLAINT**

Assured Guaranty Municipal Corp., f/k/a Financial Security Assurance Inc. (“AGM” or the “Note Insurer”), through its attorneys Susman Godfrey LLP, alleges as follows.

**NATURE OF ACTION**

1. AGM brings this suit against GMAC Mortgage, LLC (f/k/a GMAC Mortgage Corporation) (“GMACM”), Residential Asset Mortgage Products, Inc. (“RAMP”), Ally Bank (f/k/a GMAC Bank) (“Ally Bank”), Residential Funding Company, LLC (f/k/a Residential Funding Corporation) (“RFC”), Residential Capital, LLC (f/k/a Residential Capital Corporation) (“ResCap”), Ally Financial (f/k/a GMAC, LLC) (“Ally Financial”), and Residential Funding Mortgage Securities II, Inc. (“RFMS”) (collectively, the “GMAC Entities”) for breach of contract, reimbursement, and indemnification under New York law, in connection with two

securitizations of residential mortgages. One securitization transaction occurred in 2004; the other in 2006 (together, “the Transactions”).

2. The GMAC Entities induced AGM to issue financial guaranty insurance for the Transactions by making numerous representations and warranties concerning (1) the quality and characteristics of the mortgage loans serving as collateral for the Transactions and (2) the conduct of the GMAC Entities with respect to the origination of the mortgage loans, the sale of mortgage loans to the securitization trusts, and the servicing of the mortgage loans in the trusts. AGM’s credit support was imperative to the triple-A rating of the securities to be marketed to investors, the viability of the Transactions, and, ultimately, the GMAC Entities’ ability to earn millions of dollars in transaction and servicing fees. However, the representations and warranties made by the GMAC Entities were false, the GMAC Entities have not honored their contractual obligations, and AGM has suffered, and will continue to suffer, millions of dollars in losses as a result.

3. The GMAC Entities controlled nearly every aspect of the Transactions. The mortgage loans underlying the securitizations were originated or acquired by GMACM (2004 transaction) and RFC (2006 transaction). GMACM and RFC then sold the mortgage loans to other GMAC Entities, RAMP (2004 transaction) and RFMS (2006 transaction). RAMP and RFMS then deposited these mortgage loans into trusts, which issued notes for the Transactions to investors. Another affiliate, GMAC RFC Securities, helped to underwrite and distribute the notes in both the 2004 and 2006 transactions. The Trust created to hold the mortgage loans and to issue the notes in the 2004 transaction was the GMACM Home Equity Loan Trust 2004-HE3. The Trust created to hold the mortgage loans and to issue the notes in the 2006 transaction was the Home Equity Loan Trust 2006-HSA3.

4. The GMAC Entities also serviced the mortgage loans after the offerings. GMACM, in addition to originating or acquiring the mortgage loans in the 2004-HE3 transaction, was also the servicer. Likewise, RFC was the servicer for the 2006-HSA3 transaction. A servicer's primary role is to supervise the collection of borrower payments related to the mortgage loans. As servicers, GMACM and RFC collected substantial servicing fees.

5. Yet another GMAC Entity, Ally Bank, served as the custodian of the 2004-HE3 transaction and collected fees in that role. As custodian, Ally Bank had certain oversight and maintenance duties with respect to the 2004-HE3 transaction, including receiving and holding certain documents and other instruments delivered by the servicer relating to the underlying mortgage loans.

6. AGM is a leading provider of financial guaranties and credit enhancement products to investors, financial institutions, and other participants in the global capital markets. To make the securities in each of the Transactions attractive to investors, the GMAC Entities requested that AGM provide financial guaranty insurance policies ("Policies") for the Transactions, guaranteeing the payment of principal and interest to investors who would purchase notes issued on the deals. As a result of AGM's participation, the GMAC Entities were able to engage in the Transactions and earn millions of dollars in transaction and servicing fees.

7. To induce AGM to participate in the Transactions, the GMAC Entities made numerous representations and warranties to AGM concerning the mortgage loans underlying the Transactions and the conduct of the GMAC Entities. In reliance on these representations and warranties, AGM issued the Policies. Among other promises, the GMAC Entities represented that there were no material defaults, breaches, or violations as to the underlying mortgage loans, that (as to the 2006-HSA3 transaction) the mortgage loans were originated in accordance with the GMAC Entities' underwriting guidelines, and that the loan files were complete and contained

all documentation needed to verify the quality and characteristics of the mortgage loan, the mortgagor, and the mortgaged property. The GMAC Entities further represented and warranted that there were no material defaults, breaches, or violations in their servicing of the underlying mortgage loans.

8. The GMAC Entities' representations and warranties were essential to AGM's decision to issue the Policies. Mortgage loans with a default at origination, or which do not comply with guidelines or lack required documentation, bear a higher expected default rate, and upon default, bear a higher expected loss. Such mortgage loans thus pose a higher risk to insurers such as AGM. AGM relied on the truth and accuracy of the GMAC Entities' contractual representations and warranties in agreeing to provide insurance. Indeed, AGM's ability to accurately assess the risks of the Transactions depended entirely on the truthfulness of the GMAC Entities' disclosures and representations and warranties about the quality of the mortgage loan pools and the GMAC Entities' underwriting and servicing standards.

9. The GMAC Entities materially breached numerous representations and warranties and other contractual obligations. For instance, AGM has discovered the following: (a) evidence of misrepresentations by borrowers in connection with the origination of mortgage loans (breaching, among other things, the representation that the mortgage loans were not in default, breach, or violation of their relevant loan agreements and mortgages); (b) numerous instances of missing, critical loan documentation; (c) discrepancies between the data provided by the GMAC Entities at the time of the Transactions and the information in the loan files; (d) violations of the GMAC Entities' underwriting guidelines; and (e) failure to provide the required notice to AGM before the sale of hundreds of millions of dollars in subsequent mortgage loans into the securitization trusts, many of which were mortgage loans that were themselves in breach

of the GMAC Entities' representations and warranties, and which have subsequently defaulted at an alarming rate.

10. Based on the widespread defects in the mortgage loan pools underlying the Transactions and the fact that the GMAC Entities and their related brokers and correspondents originated, sold, and serviced the mortgage loans in these pools, the GMAC Entities were aware of the noncompliance of the mortgage loans with the representations and warranties made to AGM and other counterparties. The GMAC Entities breached their contractual obligations by nevertheless subsequently failing to repurchase or substitute these defective mortgage loans as required.

11. The GMAC Entities fundamentally frustrated the parties' bargains through their material and pervasive breaches of their representations and warranties, their contractual loan-level repurchase or substitution obligations, their contractual obligations to provide notices, files, and other documents, other conditions precedent and covenants, and the parties' contracts as a whole. Defendants' breaches have inflicted and continue to inflict tremendous harm on AGM, including AGM's payment of approximately \$55.7 million in claims in the Transactions as of the April 25, 2012 distribution date, and potentially tens of millions of dollars more in claims AGM may be required to pay in the future.

12. AGM also seeks reimbursement and indemnity for all of its costs, expenses, and losses resulting and that may in the future result from the GMAC Entities' breaches, including Policy claim payments, related expenses, and attorneys' fees.

#### **THE PARTIES**

13. AGM is a New York corporation with its principal place of business at 31 West 52nd Street, New York, New York 10019.

14. GMAC Mortgage, LLC (f/k/a GMAC Mortgage Corporation) is a limited liability company organized under the laws of the state of Delaware with its principal place of business at 1100 Virginia Drive, Fort Washington, PA 19034.

15. Residential Asset Mortgage Products, Inc. is a Delaware corporation. Its principal place of business is at 8400 Normandale Lake Blvd. Suite 600, Minneapolis, MN 55437.

16. Ally Bank (f/k/a GMAC Bank) is an online bank chartered under Utah law, with its principal place of business at 6985 Union Park Center, Midvale, UT 84047.

17. Residential Funding Company, LLC (f/k/a Residential Funding Corporation) is a limited liability company organized under the laws of the State of Delaware. Its principal place of business is at 8400 Normandale Lake Blvd. Suite 250, Minneapolis, MN 55437.

18. Residential Capital, LLC (f/k/a Residential Capital Corporation) is a Delaware limited liability corporation and a wholly-owned subsidiary of Ally Financial. Its principal place of business is at One Meridian Crossings, Minneapolis, MN 55423. ResCap is the corporate parent of GMACM.

19. Ally Financial (f/k/a GMAC, LLC) is a Delaware corporation with its principal place of business in Detroit, Michigan. Its principal place of business is at 200 Renaissance Center, Detroit, MI 48265. Ally Financial is the parent company of ResCap, GMACM, and all GMACM-affiliated entities relevant to this action.

20. Residential Funding Mortgage Securities II, Inc. is a Delaware corporation. Its principal place of business is at 8400 Normandale Lake Blvd., Suite 600, Minneapolis, MN 55437.

## **JURISDICTION AND VENUE**

21. This Court has jurisdiction pursuant to 28 U.S.C. § 1332. AGM and the Defendants are citizens of different States, and the amount in controversy is well in excess of \$75,000.

22. Venue is proper in this District under 28 U.S.C. §§ 1391(a)(2) and 1391(a)(3) and as contractually agreed to by the parties in this action. Moreover, GMACM, RAMP, RFC, and RFMS, parties to this action, have agreed to submit to the jurisdiction of this Court, and have agreed not to challenge venue in this Court.

## **FACTUAL ALLEGATIONS**

23. This case involves over a billion dollars in home equity loan backed securities sponsored by the GMAC Entities in two transactions, one executed in 2004 and one executed in 2006. Through the Policies, AGM guaranteed certain payments of principal and interest on the securities. AGM brings this suit because the GMAC Entities breached their representations, warranties, and obligations under the Transaction Documents, causing AGM significant and continuing injury.

24. In the period relevant to this action, the GMAC Entities originated, acquired, sold, and serviced residential mortgage loans, including the mortgage loans securing the Transactions, and, from time to time, arranged for the securitization of those mortgage loans and the sale of securities collateralized by those mortgage loans to investors, often in the form of notes.

25. The two seller/servicers in the Transactions, GMACM and RFC, are both subsidiaries of GMAC-RFC Holding Company, LLC (“GMAC-RFC”). GMAC-RFC is a subsidiary of ResCap, which in turn is a subsidiary of Ally Financial, which has exercised domination and control over its subsidiaries’ actions, including GMACM, Ally Bank, ResCap, and RFC.

26. GMAC-RFC was the fourth largest subprime mortgage lender in 2004, when it loaned \$26 billion to subprime borrowers. *See Financial Crisis Inquiry Report, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (the “FCIC Report”), published in January 2011, at 504.

27. The FCIC Report notes that, in light of Ally Financial and its subsidiaries’ systematic failure to ensure the credit quality of the mortgage loans backing its securitizations, repurchase demands against GMACM and Ally Financial have mounted. From 2007 to 2010, the Federal National Mortgage Association (“Fannie Mae”) has forced Ally Financial to buy back approximately \$838 million worth of mortgage loans that served as collateral in securitizations in which Fannie Mae invested. *Id.* at 225. And in 2009 and 2010, the Federal Home Loan Mortgage Corporation (“Freddie Mac”) forced Ally Financial to buy back approximately \$453 million worth of mortgage loans that served as collateral in securitizations in which Freddie Mac invested. *Id.*

28. Today, a very high percentage of GMAC-RFC-originated mortgage loans have suffered delinquencies or been charged off, and the mortgage lending practices of Ally Financial’s subsidiaries, including the GMAC Entities, have led Ally Financial to the brink of financial ruin. Ally Financial recently announced that it is seeking a buyer for all or parts of ResCap, which has reportedly lost \$555 million since 2009.

**Investigations and Lawsuits Relating to Mortgage Loan Securitizations  
by GMAC Entities and Affiliated Companies**

29. GMACM is currently being investigated by the U.S. Department of Justice (“DOJ”) for fraud related to the origination and underwriting of mortgage loans. On June 29, 2011, Ally Financial disclosed that DOJ had served GMACM with a subpoena that “includes a broad request for documentation and other information in connection with its investigation of potential fraud related to the origination and/or underwriting of mortgage loans.” Ally Fin. Inc.,



Amendment No. 3 to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011).

30. Additionally, on September 2, 2011, the Federal Housing Finance Authority (“FHFA”) filed suit in the Supreme Court of the State of New York, New York County, against Ally Financial and several of its subsidiaries—including GMACM, RFC, RAMP—for claims arising in connection with their role in the public filing of offering documents containing false and misleading statements. These claims arise from Freddie Mac’s purchase of over \$6 billion in certificates issued through twenty-one transactions similar to the transactions at issue here. Among other claims, FHFA asserted a claim for common law fraud against various Ally Financial subsidiaries, including RFC and RAMP, and aiding and abetting claims against Ally Financial for its intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the subject certificates.

31. The FHFA also alleges violations of state and federal securities laws by Ally Financial and several of its subsidiaries stemming from false and misleading statements contained in publicly filed prospectuses, prospectus supplements, registration statements, and other offering documents. Additionally, FHFA has filed aiding and abetting claims against Ally Financial and certain of its affiliates for their intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the certificates. The FHFA action seeks relief in the form of rescission and recovery of the \$6 billion purchase price of the certificates, including lost principal and interest, as well as punitive damages and attorneys’ fees and costs.

32. Ally Financial also disclosed that the U.S. Securities and Exchange Commission (the “SEC”) served a subpoena on Ally Financial, requesting documentation regarding certain

“bulk settlements” relating to securitized mortgage loans, as well as a request for materials provided to investors and prospective investors in mortgage securitization transactions. *Id.*

33. Defendants GMACM and RFC face numerous pending lawsuits brought by investors and insurers relating to mortgage loan securitizations. For example, GMACM and RFC are each currently facing lawsuits brought by MBIA Insurance Corporation (“MBIA”) in New York Supreme Court in which MBIA alleges that the defendants breached their contractual representations and warranties relating to the characteristics of mortgage loans contained in transactions similar to the ones at issue here, that defendants improperly serviced the mortgage loans, and that defendants affirmatively misrepresented the credit quality of tens of thousands of mortgage loans, with a total original principal balance of more than \$4 billion, as a means of unfairly shifting to investors and MBIA risks that GMACM and RFC should have borne. Ally Financial and several of its subsidiaries including ResCap, Ally Bank, RFC, and GMACM are also currently facing several lawsuits brought by Financial Guaranty Insurance Company (“FGIC”) in which FGIC alleges that in connection with transactions similar to the ones at issue here, the defendants, acting as alter egos of each other, affirmatively misrepresented the credit quality of tens of thousands of mortgage loans, with a total original principal balance of about \$1.87 billion, as a means of unfairly shifting to investors and FGIC risks which the defendants should have borne and have breached their contractual obligations.

34. According to Ally Financial’s most recent SEC filings, as of April 27, 2012, there are more than 30 pending lawsuits against Ally Financial’s mortgage-related subsidiaries, including in many instances GMACM and RFC, as well as Ally Financial itself. *See* Ally Fin. Inc., Quarterly Report (Form 10-Q), at 72 (April 27, 2012); Ally Fin. Inc., Annual Report (Form 10-K), at 229, 230 (Feb. 28, 2012); Ally Fin. Inc., Quarterly Report (Form 10-Q), at 159 (Nov. 4, 2011). The plaintiffs in those suits have alleged, among other things, that Ally Financial’s

various subsidiaries made misstatements and omissions in registration statements, prospectuses, prospectus supplements, and other documents related to mortgage loan securitizations. The alleged misstatements and omissions typically concern false representations and warranties that the mortgage loans complied with underwriting standards. Ally Fin. Inc., Quarterly Report (Form 10-Q), at 72 (April 27, 2012); Ally Fin. Inc., Quarterly Report (Form 10-Q), at 159 (Nov. 4, 2011).

35. Moreover, Ally Financial has disclosed that it expects additional lawsuits from financial guaranty or “monoline” insurers, like AGM, given that Ally Financial and its subsidiaries sold \$42.7 billion of mortgage loans into securitizations “wrapped” by such insurers from 2004 to 2007. During the year ended December 31, 2011, Ally Financial and its subsidiaries have received repurchase claims from monoline insurers for \$265 million worth of mortgages related to securitizations it consummated between 2004 and 2007. In its 2011 Annual Report (Form 10-K), Ally Financial disclosed that it has already reserved \$825 million for representations and warranties claims and confirmed that “additional litigation with other monolines is likely.” Ally Fin. Inc., Annual Report (Form 10-K), at 98, 225 (Feb. 28, 2012).

36. According to its most recent quarterly report, Ally Financial believes that “the total exposure of the applicable Mortgage Companies to mortgage representation and warranty claims is most significant for loans originated and sold between 2004 through 2008.” Ally Fin. Inc., Quarterly Report (Form 10-Q), at 116 (April 27, 2012). This period encompasses the closing dates of both the 2004-HE3 and 2006-HSA3 Transactions, as well as the period during which GMACM sold additional mortgage loans into the 2004-HE3 Trust.

37. In addition to the pending investigations and lawsuits involving their woeful mortgage loan origination and underwriting practices, the GMAC Entities have been punished severely for their misconduct in mortgage loan servicing.

38. For example, on February 9, 2012, the Federal Reserve Board announced that Ally Financial, its subsidiaries, including GMACM, and several other mortgage loan servicers would be required to pay \$766.5 million in monetary sanctions for “unsafe and unsound processes and practices in residential mortgage loans servicing and foreclosure processing.” Press Release, Fed. Reserve Bd., Federal Reserve Board Announces Agreement in Principle with Five Banking Organizations Regarding the Issuance of Monetary Sanctions (Feb. 9, 2012). And on February 12, 2012, the Federal Reserve Board imposed over \$200 million of this fine against Ally Financial, ResCap, and GMACM pursuant to an assessment order, which requires that the sanctions be paid into various borrower assistance programs and nonprofit programs established to help victims of improper servicing and foreclosure practices. *See In re Ally Fin. Inc.*, FRB Docket Nos. 12-006-CMP-HC & 12-006-CMP-DEO (Feb. 10, 2012) (the “Assessment Order”). According to the Federal Reserve Board, the sanction “takes into account the maximum amount prescribed for unsafe and unsound practices under the applicable statutory limits, the comparative severity of the institutions’ misconduct, and the comparative sizes of the institutions’ foreclosure activities.” *See* Press Release, Fed. Reserve Bd., Federal Reserve Board Announces Agreement in Principle with Five Banking Organizations Regarding the Issuance of Monetary Sanctions (Feb. 9, 2012).

39. Also on February 9, 2012, the United States Attorney General announced that Ally Financial will take part in a \$25 billion settlement to resolve claims brought by the government in response to the “**reckless and abusive mortgage practices**” of Ally Financial and four similarly situated bank-holding companies. Eric Holder, U.S. Attorney General, Remarks at the Mortgage Servicers Settlement Press Conference (Feb. 9, 2012). Although the settlement releases Ally Financial from certain civil claims brought by the DOJ and multiple state attorneys general, *see id.*; National Mortgage Settlement, Servicing Standard Highlights,

available at <http://www.nationalmortgagesettlement.com> (last visited Mar. 23, 2012), the settlement was not designed to resolve any other liabilities that Ally Financial has incurred through its improper origination, securitization, and servicing practices. See National Mortgage Settlement, About the Settlement, <http://www.nationalmortgagesettlement.com/about> (last visited Mar. 23, 2012).

40. According to the Attorney General, the \$25 billion settlement and \$766.5 million sanctions are just “the latest step forward” in holding Ally Financial and others accountable for “egregious mortgage loan servicing abuses.” Eric Holder, U.S. Attorney General, Remarks at the Mortgage Servicers Settlement Press Conference (Feb. 9, 2012).

41. In addition to these recent settlements and the Assessment Order, the Federal Reserve Board and the Federal Deposit Insurance Corporation (the “FDIC”) previously ordered Ally Financial, GMACM, and several other Ally Financial subsidiaries to adopt new procedures and practices in relation to mortgage loan servicing. See *In re Ally Fin. Inc.*, FRB Docket Nos. 11020-B-HC & 11020-B-DEO, FDIC-11-123b (April 13, 2011).

#### **The 2004-HE3 Transaction**

42. In 2004, AGM entered into a transaction with defendants GMACM and RAMP to guaranty approximately \$977 million in notes backed by home equity loans that GMACM had either originated or purchased from one of its affiliates. In this transaction, the GMAC Home Equity Loan Trust 2004-HE3 served as the Issuer of approximately \$977 million in notes.

43. In this transaction, GMACM acted as both Seller and Servicer of the mortgage loans, and Ally Bank acted as the Custodian.

44. The 2004-HE3 transaction was structured to permit GMACM to add mortgage loans to the pool after closing (“Subsequent Mortgage Loans”). GMACM was permitted to sell Subsequent Mortgage Loans to the pool on certain Subsequent Transfer Dates pursuant to the

terms of Subsequent Transfer Agreements—but *only* in compliance with the conditions imposed upon such transfers in the Transaction Documents.

45. GMACM and RAMP offered the 2004-HE3 notes for sale pursuant to, among other things, a prospectus and a prospectus supplement that touted AGM's involvement in the 2004-HE3 transaction as the "Enhancer," as well as AGM's "triple-A" ratings. The prospectus supplement also stated that "[a]ll of the mortgage loans were underwritten generally in accordance with GMACM's underwriting standards," including the Subsequent Mortgage Loans.

46. AGM agreed to issue a financial guaranty insurance policy related to the 2004-HE3 transaction based on explicit representations and warranties by the Defendants as to the mortgage loans backing those securities. This Policy enhanced the ratings and marketability of the 2004-HE3 notes.

47. In connection with the 2004-HE3 transaction and related 2004-HE3 Policy, GMACM, RAMP, Ally Bank, and AGM executed a number of Transaction Documents.

#### **2004-HE3 Mortgage Loan Purchase Agreement**

48. Through a Mortgage Loan Purchase Agreement ("2004-HE3 MLPA"), GMACM sold a pool containing thousands of home equity loan mortgages to RAMP and RAMP deposited them with the GMAC Home Equity Loan Trust 2004-HE3, which would issue the securities at issue.

49. The 2004-HE3 MLPA expressly identifies the Note Insurer (termed the Enhancer) as AGM. The 2004-HE3 MLPA further provides that AGM is a third-party beneficiary under the agreement and is entitled to enforce the agreement. 2004-HE3 MLPA § 8.11.

50. In contracting with AGM (referred to as "Financial Security" in the transaction documents) to purchase financial guaranty insurance on the securities, GMACM made a number of representations and warranties in the 2004-HE3 MLPA concerning the quality and

characteristics of the mortgage loans underlying the transaction. 2004-HE3 MLPA § 3.1. These representations and warranties are materially false, and based on information obtained by AGM on samples of mortgage loans to date, affect a substantial number of mortgage loans in the pool. GMACM represented that:

(a) GMACM “is or will be in compliance with the laws of each state in which any Mortgaged Property is located to extent necessary to ensure the enforceability of each Mortgage Loan,” 2004-HE3 MLPA § 3.1(a)(i);

(b) “The information set forth in the Mortgage Loan Schedule with respect to each Mortgage Loan or the Mortgage Loans is true and correct in all material respect as of the date or dates respecting which such information is initially furnished,” *Id.* § 3.1(b)(i);

(c) “To the best of GMACM’s knowledge, there is no valid offset, defense or counterclaim of any obligor under any Loan Agreement or Mortgage,” *Id.* § 3.1(b)(iv);

(d) The Mortgage File for each Mortgage Loan “contains or will contain . . . each of the documents and instrument specified to be included therein,” *Id.* § 3.1(b)(ix);

(e) “A policy of hazard insurance and flood insurance, if applicable, was required from the Mortgagor for the Mortgage Loan when the Mortgage Loan was originated,” *Id.* § 3.1(b)(xxviii);

(f) “To the best of the GMACM’s knowledge, the related Loan Agreement and the related Mortgage at the time it was made complied in all material respects with applicable local, state and federal laws, including, but not limited to, applicable predatory lending laws,” *Id.* § 3.1(b)(x);

(g) “Other than with respect to a payment default, there is no material default, breach, violation or event of acceleration existing under the terms of any Loan Agreement or Mortgage and, to the best of GMACM’s knowledge, no event which, with notice and expiration

of any grace or cure period, would constitute a material default, breach, violation or event of acceleration under the terms of any Loan Agreement or Mortgage, and no such material default, breach, violation or event of acceleration has been waived by GMACM involved in originating or servicing the related Mortgage Loan,” *Id.* § 3.1(b)(xxix);

(h) “GMACM used no selection procedures that identified the Mortgage Loans as being less desirable or valuable than other comparable mortgage loans originated or acquired by GMACM under the GMACM Home Equity Program. The Mortgage Loans are representative of GMACM’s portfolio of adjustable rate mortgage loans that were originated under the GMACM Home Equity Program,” *Id.* § 3.1(b)(xxxvii).

51. The preceding provisions are examples of the dozens of representations and warranties GMACM made in the transaction documents concerning the quality and characteristics of the mortgage loans in the 2004-HE3 transaction. These representations and warranties were essential to AGM’s agreement to issue its financial guaranty insurance policy in the 2004-HE3 transaction. In fact, AGM agreed to issue the insurance policy subject only to the satisfaction of certain conditions precedent, including a certification that the representations and warranties made in the Transaction Documents “shall be true and correct on and as of the Closing Date as if made on the Closing Date.” 2004-HE3 I&I § 3.01(d).

52. GMACM, as the mortgage loan originator and seller, assumed the risk and the burden of assessing the characteristics and attributes of those mortgage loans. Accordingly, among other promises, GMACM represented and warranted that it provided complete and accurate information as to the mortgage loans and that there were no material defaults, breaches, or violations relating to the mortgage loans. GMACM further assumed the obligation of verifying the accuracy of the representations and warranties concerning the mortgage loans and loan documentation and the completeness of the documentation pertaining to the mortgage loans,



which backed the securities AGM was to insure. In turn, AGM, as the Note Insurer, bore the burden of evaluating whether mortgage loans bearing the characteristics, attributes, loan documentation and other items as represented and warranted by GMACM would perform as AGM had projected, despite economic variables that might change post-closing.

53. This explicit division of responsibility was a reasoned risk allocation. GMACM and its affiliates originated the mortgage loans and prepared and finalized the loan documentation and loan files before conveying the mortgage loans to the trusts that issued the securities AGM insured. GMACM owned and serviced the mortgage loans, and Ally Bank, as Custodian, held the loan files, which afforded these entities access and control over information required to evaluate the mortgage loans. GMACM thus had the means to assess the quality of the prospective and actual mortgagors, mortgaged properties and other related mortgage loan characteristics and attributes, as well as the accuracy and completeness of the loan documentation, and—in the event a defect was discovered—exclude that mortgage loan from the securitization, or seek other recourse. By contrast, AGM did not originate any of the underlying mortgage loans, has never been in privity with the mortgage loan brokers with whom GMACM originated the mortgage loans, did not prepare or finalize the loan documentation and loan files, never owned the mortgage loans or the loan files, and lacks direct recourse against the mortgage loan brokers with whom GMACM originated the mortgage loans.

54. For these reasons, these sophisticated contracting parties sensibly agreed that GMACM would bear the risk and the burden of assessing the validity, sufficiency, and accuracy of the loan documentation and characteristics and attributes of the mortgage loans it originated and conveyed to the owning trusts, and AGM would bear the burden of evaluating whether mortgage loans bearing (amongst other things) these characteristics, attributes, and loan documentation would perform after the closing of the transactions as AGM had projected. In

reliance on GMACM's contractual representations and warranties about the mortgage loans' quality and characteristics, AGM reviewed a sampling of certain mortgage loan documentation in order to confirm that the documentation corresponded to the parameters GMACM had provided AGM. AGM was not required to verify the data provided by GMACM—that, by explicit agreement, was GMACM's contractual responsibility.

55. The MLPA required GMACM—within 45 or 90 days (depending on the circumstances) of discovering or receiving notice of a breaching mortgage loan—to “cure such breach in all material respects” *or* either (a) repurchase the breaching mortgage loan or (b) substitute a nonbreaching mortgage loan for that breaching mortgage loan. *See* 2004-HE3 MLPA § 3.1 (e). AGM has demanded that GMACM comply with this provision by sending GMACM “put back” demands—but to date, GMACM has not repurchased, substituted, or cured a single mortgage loan and therefore breached its repurchase-or-cure obligations.

56. The 2004-HE3 MLPA also contains numerous provisions regarding the sale of Subsequent Mortgage Loans to the Issuer on Subsequent Transfer Dates. *See, e.g.*, 2004-HE3 MLPA § 2.2. Although this transaction was structured to allow GMACM to sell these Subsequent Mortgage Loans into the existing pool, the MLPA sets forth specific notice and consent provisions relating to AGM, in order to give AGM the opportunity to assess and either approve or reject these new mortgage loans. For instance, the MLPA provides that:

(a) GMACM must provide certain entities, *including AGM* (“the Enhancer”), “with a timely Addition Notice . . . which notice shall be given no later than seven Business Days prior to the related Subsequent Transfer Date, and shall designate the Subsequent Mortgage Loans to be sold to the Issuer, the aggregate Principal Balance of such Subsequent Mortgage Loans as of the related Subsequent Cut-Off Date and any other information reasonably requested

by the Indenture Trustee or the Enhancer with respect to such Subsequent Mortgage Loans.”

2004-HE3 MLPA § 2.2(b)(i);

(b) GMACM “shall have delivered to the Indenture Trustee and the Enhancer a duly executed Subsequent Transfer Agreement . . . (A) confirming the satisfaction of each condition precedent and representations and warranties specified in this Section 2.2(b) and in Section 2.2(c) and in the related Subsequent Transfer Agreement and (B) including a Mortgage Loan Schedule listing the Subsequent Mortgage Loans.” *Id.* § 2.2(b)(ii);

(c) AGM “shall have approved the sale of the Subsequent Mortgage Loans (which approval shall not be unreasonably withheld) within five (5) Business Days of receipt of a loan tape containing the same fields of information regarding the Subsequent Mortgage Loans that was delivered to the Enhancer prior to the Closing Date with respect to the Initial Mortgage Loans.” *Id.* § 2.2(b)(vi);

(d) The Issuer is not obligated to purchase any Subsequent Mortgage Loan unless the loan satisfies, among many other conditions, the following: compliance with “the representations and warranties specified in the related Subsequent Transfer Agreement” and MLPA; that GMACM has not “selected such Subsequent Mortgage Loans in a manner that it reasonably believes is adverse to the interests of the Noteholders or the Enhancer”; that GMACM “will deliver to the Enhancer and the Indenture Trustee certain Opinions of Counsel described in Section 2.2(b) and acceptable to the Enhancer and the Indenture Trustee with respect to the conveyance of such Subsequent Mortgage Loans”; and that “such Subsequent Mortgage Loan will be underwritten substantially in accordance with the criteria set forth under . . . the Prospectus Supplement.” *Id.* Any Subsequent Mortgage Loan “materially varying” from these criteria may only be purchased by the Issuer if it is “acceptable to the Enhancer, in its reasonable discretion.” *Id.*

(e) “[w]ithin five Business Days after each Subsequent Transfer Date, GMACM shall deliver to the Rating Agencies, the Indenture Trustee and the Enhancer a copy of the Mortgage Loan Schedule reflecting the Subsequent Mortgage Loans in electronic format.” *Id.* § 2.2(c).

57. GMACM breached these disclosure-and-notice obligations. Despite the fact that through 2007, GMACM had sold hundreds of millions of dollars of Subsequent Mortgage Loans into the 2004-HE3 Trust, AGM never received any of the notice documents described above and required by the MLPA, and GMACM failed to obtain AGM’s consent prior to selling the Subsequent Mortgage Loans to the 2004-HE3 Trust. These continuing contractual breaches deprived AGM of its ability to confirm that the Subsequent Mortgage Loans did not alter the risk profile in the transaction. Indeed, the Subsequent Mortgage Loans added by GMACM to the 2004-HE3 Trust have performed worse than the initial mortgage loans sold to the 2004-HE3 Trust.

#### **2004-HE3 Servicing Agreement**

58. GMACM and the 2004-HE3 Trust entered into a Servicing Agreement (“2004-HE3 SA”) under which GMACM would service the underlying mortgage loans. The 2004-HE3 SA set forth numerous duties of GMACM and again designates AGM, as the Enhancer, as a third-party beneficiary to the agreement. 2004-HE3 SA § 8.05.

59. Under the terms of the 2004-HE3 SA, GMACM represented and warranted that it would “enforce the representations and warranties of the Sellers pursuant to the [2004-HE3 MLPA].” Since GMACM was both the Seller and the Servicer, GMACM effectively promised to enforce its own representations and warranties. 2004-HE3 SA § 2.03.

60. The 2004-HE3 SA reiterated the obligation of GMACM as the Seller to either cure breaches of these representations and warranties in all material respects within the

designated cure period, or to repurchase defective Mortgage Loans or substitute eligible substitute mortgage loans. 2004-HE3 SA § 2.03. As previously stated, GMACM is in breach of its repurchase obligations. GMAC is also in breach of its notice obligations under the 2004-HE3 SA. GMACM represented and warranted in the 2004-HE3 SA that it would “promptly notify [the] Seller”—again, itself—of any such breaches. *Id.*

61. The Servicing Agreement also included the following additional representations and warranties:

(a) “[T]he servicing of the Mortgage Loans has at all times been conducted in material compliance with all applicable federal, state and local laws, rules and regulations and there has been no material violation of any such laws, rules or regulations arising out of the servicing of the Mortgage Loans,” *id.* § 2.01(g);

(b) “The Servicer shall service and administer the Mortgage Loans in a manner generally consistent with the terms of the Program Guide,” *id.* § 3.01(a);

(c) “Whenever required by statute or regulation, the Servicer shall provide to the Enhancer, any Securityholder upon reasonable request (or a regulator for a Securityholder) or the Indenture Trustee, reasonable access to the documentation regarding the Mortgage Loans.” *Id.* § 3.12.

62. Upon information and belief regarding the 2004 transaction’s performance, GMACM, as Seller and Servicer, has breached its obligations under the 2004-HE3 Transaction Documents, including but not limited to Section 2.01—which provides that “the servicing of the Mortgage Loans has at all times been conducted in material compliance with all applicable federal, state and local laws, rules and regulations and there has been no material violation of any such laws, rules or regulations arising out of the servicing of the Mortgage Loans.”

63. GMACM's servicing violations have been documented by various governmental agencies, including the Federal Reserve Board, which noted GMACM's "unsafe and unsound processes and practices in residential mortgage loans servicing and foreclosure processing." Press Release, Fed. Reserve Bd., Federal Reserve Board Announces Agreement in Principle with Five Banking Organizations Regarding the Issuance of Monetary Sanctions (Feb. 9, 2011). Upon information and belief, GMACM's servicing of the underlying residential mortgage loans in this case violated its obligations under the Transaction Documents.

64. Moreover, on information and belief, GMACM is and has been aware that a substantial number of the underlying mortgage loans, whether acquired at the closing or thereafter, were defective and, thus, in breach of its own representations and warranties. Despite this knowledge, GMACM has failed to repurchase the defective mortgage loans or replace them with mortgage loans which conformed to the underwriting guidelines, as it is required to do so.

65. In December 2010, because of the poor performance of the two Transactions, AGM terminated GMACM as servicer, pursuant to its contractual right, and Specialized Loan Servicing, LLC ("SLS") became the new servicer. After SLS became the servicer, it provided AGM with certain loan files for the 2004 transaction, including certain loan files for the Subsequent Mortgage Loans added by GMACM in the 2004 transaction. AGM wanted these loan files so it could compare the information in those loan files to GMACM's underwriting guidelines and GMACM's representations and warranties in the contractual documents. Before the servicer termination, AGM had repeatedly requested the same loan files from GMACM—but GMACM never provided a single loan file from the 2004 transaction to AGM, in breach of its contractual obligations to do so.

### 2004-HE3 Custodial Agreement

66. Also on June 30, 2004, Ally Bank (then known as GMAC Bank), entered into the 2004-HE3 Custodial Agreement (“2004-HE3 CA”), whereby it agreed, among other things, to serve as Custodian of the underlying mortgage loan notes on behalf of the 2004-HE3 Trust. AGM is an express third-party beneficiary of that agreement. 2004-HE3 CA § 4.6.

67. In the Custodial Agreement, Ally Bank undertook several obligations to AGM concerning the manner in which Ally Bank would ensure that the Mortgage Loans contained complete and accurate information, so that GMACM was in compliance with its representations and warranties regarding the origination, selection, and characteristics of those mortgage loans. The Custodial Agreement provides:

(a) “The Custodian shall deliver to the Indenture Trustee . . . with a copy to the Enhancer, with respect to the Loan Agreements related to the Initial Mortgage Loans and the Loan Agreements related to any Subsequent Mortgage Loans, on or prior to the Closing Date or the related Subsequent Transfer Date, as applicable, an Initial Certification . . . evidencing receipt of the Loan Agreements for each Initial Mortgage Loan and the Loan Agreements for each Subsequent Mortgage Loan listed on the Mortgage Loan Schedule or Amended Mortgage Loan Schedule.” 2004-HE3 CA § 2.2(a);

(b) “Within 90 days from the Closing Date or Subsequent Transfer Date, as applicable, the Custodian . . . shall deliver to the Indenture Trustee, as pledgee of the Issuer and to Financial Security Assurance Inc., as the Enhancer . . . a final certification . . . evidencing the completeness of the receipt of the Loan Agreements.” *Id.* § 2.2(b).

68. The Custodial Agreement also states that “[u]pon discovery by the Custodian of a breach of any representation or warranty made by either Seller in the Purchase Agreement or assigned by either Seller pursuant to the Purchase Agreement with respect to a Mortgage Loan

relating to a Loan Agreement, the Custodian shall give prompt written notice to such Seller and the Enhancer.” *Id.* § 2.3.

69. Once again, AGM never received any initial or final certifications relating to the Subsequent Mortgage Loans that GMACM sold, without AGM’s knowledge, into the 2004-HE3 Trust. Ally Bank’s breach of its contractual obligation to provide these certifications further deprived AGM of its right to assess and either accept or reject the risk associated with these Subsequent Mortgage Loans.

### **2004-HE3 Insurance and Indemnity Agreement**

70. Concurrent with the 2004-HE3 MLPA and 2004-HE3 SA, GMACM, RAMP, and AGM entered into an Insurance and Indemnity Agreement (“2004-HE3 I&I”).

71. The 2004-HE3 I&I defined “Operative Documents” to include the 2004-HE3 MLPA, 2004-HE3 SA, and the 2004-HE3 CA. 2004-HE3 I&I App. 1-2.

72. Under the 2004-HE3 I&I, GMACM and RAMP each represented and warranted, among other things, that:

(a) “The Operative Documents . . . will constitute the legal, valid and binding obligations of each of GMACM . . . and the Depositor, enforceable in accordance with their respective terms,” 2004-HE3 I&I § 2.01(f);

(b) “Neither the **Operative Documents** to which it is a party nor other material information relating to the Mortgage Loans . . . contains **any statement of a material fact which was untrue or misleading in any material respect when made**. Each of GMACM . . . and the Depositor has no knowledge of any circumstances that could reasonably be expected to cause a Material Adverse Change with respect to GMACM . . . or the Depositor. Since the furnishing of the Documents, there has been no change nor any development or event involving a



prospective change known to GMACM . . . or the Depositor that would render any of the Documents untrue or misleading in any material respect,” *id.* § 2.01(k);

(c) “Each of the representations and warranties of GMACM . . . and the Depositor **contained in the applicable Operative Documents** to which it is a party **is true and correct in all material respects** as of the date reflected therein and each of GMACM . . . and the Depositor hereby makes each such representation and warranty to, and for the benefit of, Financial Security [*i.e.*, AGM] as if the same were set forth in full herein,” *id.* § 2.01(m).

(d) That the Offering Document “**does not contain any untrue statement of a material fact and does not omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading as of the Closing Date.**” 2004-HE3 I&I § 2.01(l) (emphasis added). The Offering Document described the ostensible characteristics of the mortgage loans in the collateral pool, and among other things, stated that “[a]ll of the mortgage loans were underwritten generally in accordance with GMACM’s underwriting standards.” 2004-HE3 Prospectus Supplement, at S-40.

73. GMACM and RAMP further acknowledged AGM’s position as a third-party beneficiary of the 2004-HE3 MLPA and 2004-HE3 SA: “Each of GMACM . . . and the Depositor agrees that Financial Security shall have all rights provided to Financial Security in the Operative Documents and that Financial Security shall constitute a third-party beneficiary with respect to such rights in respect of the Operative Documents and hereby incorporates and restates its representations, warranties and covenants as set forth therein for the benefit of Financial Security,” *id.* § 2.02(k).

74. The 2004-HE3 I&I contains additional representations, warranties and covenants, many of which bolster those discussed above, that GMACM and RAMP made to persuade AGM to issue the requested financial guaranty insurance policy, including that GMACM and RAMP

would not “interfere in any material respect with the enforcement of any rights of Financial Security [AGM] under or with respect to any of the Operative Documents,” *id.* § 2.03(a); that “[n]o practice, procedure or policy employed, or proposed to be employed, by GMACM . . . or the Depositor in the conduct of its business violates any law, regulation judgment, agreement, order or decree,” *id.* § 2.01(h); and, again relating to AGM’s right of access to mortgage loan information, GMACM would furnish to AGM numerous categories of financial documents and reports and, “promptly upon request, such other data as Financial Security [AGM] may reasonably request.” *id.* § 2.02(c).

75. The 2004-HE3 I&I contains broad provisions defining events of default and AGM’s remedies for any such events of defaults. The 2004-HE3 I&I defined an event of default to include circumstances where “[a]ny representation or warranty made by GMACM . . . or the Depositor hereunder or under the Operative Documents, or in any certificate furnished hereunder or under the Operative Documents, shall prove to be untrue or incomplete in any material respect,” *id.* § 5.01(a).

76. Should an event of default occur, the 2004-HE3 I&I grants AGM broad remedies. AGM may “exercise any rights and remedies available under the Related Documents,” *id.* § 5.02(a)(ii). The 2004-HE3 I&I also permits AGM to “take whatever action at law or in equity as may appear necessary or desirable in its judgment . . . to enforce performance of any obligation of the GMACM [or] the Depositor . . . under the Related Documents.” *Id.* § 5.02(a)(iii).

77. Under the 2004-HE3 I&I, AGM has reimbursement rights, with interest, against GMACM for payments made by Financial Security that result from the failure of GMACM to fulfill certain responsibilities under the 2004-HE3 MLPA, and from “the enforcement, defense or preservation of any rights in respect of any of the Operative Documents.” *Id.* § 3.03.

78. In addition, GMACM and RAMP agreed to indemnify AGM for all losses arising out of or related to their breach of the Operative Documents. *Id.* § 3.04(a).

#### **2006-HSA3 Transaction**

79. In 2006, the GMAC Entities again sought to issue over \$200 million in securities backed by home equity loans. AGM agreed to issue a financial guaranty insurance policy covering these securities.

80. The transaction documents for this transaction (with RFC acting as seller, sponsor, and servicer, and RFMS as depositor) are substantially similar to those executed in connection with the 2004-HE3 transaction (namely, the 2006-HSA3 Home Equity Loan Purchase Agreement [“2006-HSA3 HELPA”], the 2006-HSA3 Servicing Agreement [“2006-HSA3 SA”], and the 2006-HSA3 Insurance and Indemnity Agreement [“2006-HSA3 I&I”]). As with the 2004 securitization, the GMAC Entities made comprehensive representations and warranties to induce AGM to provide financial guaranty insurance, and the GMAC Entities breached numerous representations and warranties contained in these documents.

#### **2006-HSA3 Home Equity Loan Purchase Agreement**

81. In the 2006-HSA3 transaction, RFC and its affiliates acted as both Seller and Servicer of the mortgage loans.

82. The 2006-HSA3 HELPA, pursuant to which RFC sold a pool of home equity loan mortgages to RFMS, contains many identical representations and warranties, on the part of seller RFC, as GMACM made in the 2004-HE3 MLPA: RFC attested to the truth and accuracy of the information in the Home Equity Loan Schedule (2006-HSA3 HELPA § 3.1(b)(i)); verified that there was no right of rescission, offset, etc. (*id.* § 3.1(b)(iv)); confirmed the completeness of the Mortgage Files (*id.* § 3.1(b)(ix)); represented that the Mortgage Loans complied with all applicable laws (*id.* § 3.1(b)(x)); made specific representations and warranties concerning the

quality of the mortgage loans, for instance that the CLTV for each mortgage loan was not in excess of 100% (*id.* § 3.1(b)(xiv)); and warranted that there was no material default, breach, etc. relating to the Mortgage Loans (*id.* § 3.1(b)(xxx)). RFC also represented that it complied with its own underwriting guidelines in originating the underlying mortgage loans—specifically, that “[a]ll of the Home Equity Loans have been underwritten in substantial compliance with the criteria set forth in the Program Guide,” *Id.* § 3.1(b)(xli).

83. As with the 2004-HE3 transaction, these representations and warranties as to the mortgage loan characteristics and quality were essential to AGM’s agreement to issue its Policy.

84. As with the 2004-HE3 MLPA, the 2006-HSA3 HELPA provides that AGM is a third-party beneficiary under the agreement and is entitled to enforce the agreement. *Id.* § 8.11. Indeed, the 2006-HSA3 HELPA expressly provides that RFC’s representations and warranties are made directly to AGM, as the Credit Enhancer. *Id.* § 3.1.

#### **2006-HSA3 Servicing Agreement**

85. The 2006-HSA3 SA between RFC, as Master Servicer, and Issuer Home Equity Loan Trust 2006-HSA3 sets forth numerous duties of RFC and again designates AGM, as the Credit Enhancer, a third-party beneficiary to the agreement. The provisions of the 2006-HSA3 SA are substantially similar to those of the 2004-HE3 SA.

#### **2006-HSA3 Insurance and Indemnity Agreement**

86. Concurrent with the 2006-HSA3 HELPA and 2006-HSA3 SA, RFC, RFMS, and AGM entered into an Insurance and Indemnity Agreement (“2006-HSA3 I&I”).

87. The 2006-HSA3 I&I defined “Transaction Documents” to include the 2006-HSA3 HELPA and the 2006-HSA3 SA. 2006-HSA3 I&I App. I.

88. The 2006-HSA3 I&I is substantially similar to the 2004-HE3 I&I regarding representations and warranties, events of default, remedies, reimbursement, and indemnity. The

2006-HSA3 I&I also expressly makes RFC and RFMS jointly and severally liable for any breach of their obligations. 2006-HSA3 I&I § 4.02(b).

**The GMAC Entities Have Breached the Insurance and Indemnity Agreements  
and Transaction Documents**

89. In the years since the 2004-HE3 I&I and the 2006-HSA3 I&I were executed, the performance of the mortgage loans in the securitized pools in each of the Transactions has dramatically deteriorated.

**2004-HE3 Transaction**

90. As of the April 25, 2012 distribution date, the 2004-HE3 transaction has incurred approximately \$72.1 million in cumulative losses to collateral, and AGM has paid approximately \$15.04 million in claims to noteholders. Given that there remains approximately \$219.5 million of notes still outstanding in this deal, and that the performance of the 2004-HE3 Transaction has been very poor, AGM anticipates far greater losses and Policy payments on this transaction.

91. AGM has, on numerous occasions, directly requested loan files for charged-off mortgage loans from GMACM for the purpose of comparing the information in those files to GMACM's underwriting guidelines and GMACM's representations and warranties in the contractual documents. But despite these multiple requests, GMACM has never provided the requested loan files to AGM, in violation of its obligations under the Transaction Documents.

92. AGM has, however, been able to obtain from SLS a limited number of loan files underlying the 2004-HE3 transaction. What AGM found in its analysis of these loan files was extremely disturbing. In short, the majority of the mortgage loans AGM audited violated GMACM's underwriting guidelines. Many contained evidence of fraud or negligence in the origination process. AGM's review of the loan files further revealed substantial inaccuracies in the representations and warranties provided by GMACM regarding these mortgage loans, the mortgagors and the related mortgaged properties; GMACM's original underwriting and

origination processes regarding these loans; the identity, financial means, and occupational status of the mortgagors; and the completeness and accuracy of the loan documentation. Upon information and belief, as indicated by its decision to terminate GMACM as servicer, GMACM's *servicing* of the mortgage loans backing the securities that AGM insured was deficient. These defects and deficiencies represent material breaches of the GMAC Entities' representations and warranties in the relevant contractual documents. GMACM's continuing failure to repurchase any defective mortgage loans from the collateral pool, is a further breach of its contractual obligations under the Transaction Documents.

93. **Borrower Misrepresentations.** In its review of the loan files for the mortgage loans included in the 2004-HE3 transaction, AGM identified numerous instances where the borrower misrepresented, at the time of loan origination, employment, income, assets, debt obligations, and occupancy.

94. GMACM represented and warranted that "there is no material default, breach, violation or event of acceleration existing under the terms of any Loan Agreement or Mortgage." 2004-HE3 MLPA § 3.1(b)(xxix). The misrepresentations detailed above, each of which were in breach and violation of the relevant Loan Agreements and Mortgages, constitute a breach of GMACM's representations and warranties to AGM.

95. **Missing Loan File Documentation.** GMACM represented and warranted to AGM that the Mortgage File for each Mortgage Loan "contains or will contain . . . each of the documents and instruments specified to be included therein," 2004-HE3 MLPA § 3.1(b)(ix). Yet, in many cases, AGM discovered (during the course of its investigation of origination files for the mortgage loans included in the Transactions) that the loan files did not contain critical pieces of required information and/or contained deficient or defective loan documentation, including missing underwriting documents. Inclusion of mortgage loans with missing loan file

documentation in the pool breached the GMAC Entities' representations and warranties in their agreements with AGM.

96. **Discrepancies between data provided by GMACM at the time of the transaction and information in the loan file.** AGM has discovered that with regard to a large number of the mortgage loans it reviewed, the data pulled from the loan file during AGM's audit differs from "tape data" initially provided to AGM at the time of the transaction, in violation of § 2.01(k) of the 2004-HE3 I&I.

97. GMACM represented and warranted the "Accuracy of Information," which includes "material information relating to the Mortgage Loans . . . furnished to Financial Security in writing or electronic form by GMACM." 2004-HE3 I&I § 2.01(k).

98. GMACM represented and warranted that "[t]he information set forth in the Mortgage Loan Schedule with respect to each Mortgage Loan or the Mortgage Loans is true and correct in all material respect as of the date or dates respecting which such information is initially furnished," 2004-HE3 MLPA § 3.1(b)(i). The provision of inaccurate information to AGM with regard to numerous mortgage loans breached the GMACM representations and warranties in their agreements with AGM.

99. **Violations of underwriting guidelines.** In its audit of underlying mortgage loans relating to the 2004-HE3 transaction, AGM has discovered that the vast majority of the mortgage loans do not conform to GMAC's description of the underwriting guidelines as contained in the Offering Document, in violation of § 2.01(l) of the 2004-HE3 I&I.

100. **Failure to cure or repurchase.** Based on the widespread defects in the mortgage loan pool underlying the Transactions, and the fact that GMACM, its affiliates, and its related brokers and correspondents, themselves originated, sold, and serviced those mortgage loans, AGM believes that GMACM was aware of the substantial noncompliance of the mortgage loans

with the representations and warranties made to AGM and other counterparties. GMACM breached its contractual obligations by nevertheless subsequently failing to repurchase or substitute these defective mortgage loans.

101. In February 2012, AGM submitted a repurchase demand to GMACM concerning mortgage loans it was able to review detailing the breaches and violations it found. GMACM responded by informing AGM that it would not repurchase a single mortgage loan. Needless to say, GMACM has completely failed to comply with its contractual repurchase obligations.

102. **Violations of obligations to provide notice relating to Subsequent Mortgage Loans.** As detailed above, GMACM and Ally Bank violated their respective contractual obligations in the 2004-HE3 MLPA (GMACM) and the 2004-HE3 CA (Ally Bank) to provide required notices and documents relating to the hundreds of millions of dollars' worth of Subsequent Mortgage Loans that GMACM sold to the 2004-HE3 Trust without AGM's knowledge.

103. These breaches deprived AGM of its contractual rights to evaluate, and then accept or reject these additional mortgage loans. The circumstances of GMACM's sale of these mortgage loans to the 2004-HE3 Trust are rather suspect. GMACM continued to sell mortgage loans to the trust through 2007 for three years after the closing of the 2004 transaction without ever following the contractual requirements for adding new mortgage loans to 2004-HE3 Trust. Of the approximately \$72.1 million in collateral losses suffered on the mortgage loans in the 2004-HE3 Trust, approximately \$46 million of those losses were related to Subsequent Mortgage Loans. Given that these mortgage loans have defaulted at a rate three times higher than the original mortgage loans and the pre-funding mortgage loans, it is reasonable to conclude that GMACM had a motive for withholding the required mortgage loan data from AGM.



104. **Violations of obligations to provide requested loan documents.** As discussed above, GMACM has failed to fulfill its contractual duties under the 2004-HE3 SA and 2004-HE3 I&I to provide AGM with loan files requested on multiple occasions.

#### **2006-HSA3 Transaction**

105. As of the April 25, 2012 distribution date, the 2006-HSA3 transaction has incurred approximately \$57.2 million in cumulative losses to collateral, and AGM has paid approximately \$40.7 million in claims relating to the 2006-HSA3 transaction.

106. These substantial losses led AGM to investigate the mortgage loans in the 2006-HSA3 Trust beginning in 2007. As of April 30, 2012, AGM has reviewed nearly \$46 million in mortgage loans, and has discovered rampant breaches of the GMAC Entities' representations and warranties under the Transaction Documents.

107. The GMAC Entities were aware of the substantial noncompliance of the mortgage loans with the representations and warranties made to AGM and other counterparties, but nevertheless breached their contractual obligations by failing to repurchase or substitute these defective mortgage loans upon discovery of the violations.

108. Faced with the GMAC Entities' inaction, AGM has been forced to make formal demands for repurchases of mortgage loans, beginning in December 2007 and continuing through May 2011.

109. In the first three rounds of repurchase demands—on December 6, 2007, April 18, 2008, and September 4, 2008—the GMAC Entities ultimately agreed, after extensive time, effort and resources were expended by AGM, to repurchase substantial numbers of defective mortgage loans (85%, 43%, and 72% of mortgage loans identified in AGM's demands, respectively). Despite their knowledge of extensive breaches in the collateral underlying the 2006-HSA3 transaction, the GMAC Entities did not repurchase any mortgage loans outside of the requests

made by AGM. But given the high incidence of breaches AGM identified to the GMAC Entities, and the GMAC Entities' agreement that substantial percentages warranted repurchase, the GMAC Entities were certainly aware that a significant percentage of the mortgage loans from the securitized pool outside of those formally "putback" to them would likely have the same types of material breaches.

110. Further, with regard to AGM's four subsequent putback requests in 2009 and 2011, the GMAC Entities became markedly uncooperative and abruptly refused to cure or repurchase more than a tiny percentage of the defective mortgage loans identified by AGM. Despite AGM's identification of over \$32 million in total defective mortgage loans in these later requests, the GMAC Entities have agreed to repurchase only \$5.5 million of those mortgage loans. This constitutes a further material breach of the GMAC Entities' cure, repurchase, and substitution obligations under the Transaction Documents. The GMAC Entities' deadline to comply with their cure-or-repurchase obligations under the 2006-HSA3 transaction documents has long since expired.

111. Given the high incidence of misrepresentations found in the mortgage loans that AGM has investigated to date, as well as deficiencies and defects in the loan documentation, it is a virtual certainty that a significant percentage of the mortgage loans from the 2004-HE3 and 2006-HSA3 securitized pools that AGM has not yet reviewed to date have the same or similar breaches.

**Ally Financial's Domination and Control of its Subsidiaries Resulted  
in a Single Corporate Enterprise.**

112. Ally Financial is the ultimate parent of all of the other Defendants to this action. Ally Financial owns ResCap, which in turn owns GMACM, RAMP, RFMS and RFC. Ally Financial—as the ultimate parent of ResCap, GMACM, Ally Bank, RAMP, RFMS and RFC—

has the practical ability, which it has repeatedly and admittedly exercised, to direct and control the actions of its subsidiaries.

113. Ally Financial has recently admitted to the Federal Reserve Board and FDIC that it “indirectly owns and controls . . . numerous direct and indirect nonbank subsidiaries, including Residential Capital, LLC . . . “ResCap”) and its direct and indirect subsidiaries.” See *In re Ally Fin. Inc.*, FRB Docket Nos. 11020-B-HC & 11020-B-DEO. FDIC-11-123b (April 13, 2011) (emphasis added).

114. Ally Financial’s public statements and actions from at or around the time of the Transactions’ closings until the present, also demonstrate that Ally Financial: (i) owns a majority of its subsidiaries’ stock; (ii) shares resources, management, and employees with its subsidiaries; (iii) considers its mortgage businesses to be “units” of its business; and (iv) has a business relationship with its subsidiaries designed to benefit itself at the expense of its subsidiaries.

115. From its inception as the ultimate parent company, Ally Financial focused on controlling the management of its subsidiaries to the point that it treated ResCap as an extension of itself, rather than as a subsidiary whose dealings were at arm’s length.

116. ResCap, for example, did not conduct any operations whatsoever until GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of Ally Financial’s wholly-owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial’s mortgage loan securitization business.

117. On December 1, 2006, Ally Financial had its inaugural conference call with investors, at which time Rick Buxton, then head of Ally Financial’s Investor Relations, “welcome[d everyone] to the beginning of a new era [of Ally Financial] as an independent global financial services company.” On the same investor call, Eric Feldstein, then Ally Financial’s CEO, demonstrated how Ally Financial was going to take initial steps to actively control its

subsidiaries. For instance, Feldstein declared that one of Ally Financial's first acts as controlling parent was "to integrate certain of GMAC mortgage operations . . . with RFC operations . . . to drive some cost efficiencies." *Id.*

118. Ally Financial has continued to exert its domination and control over ResCap via shared resources, management, and employees. For example, Ally Financial and ResCap shared at least three common board members, including two individuals who were active participants with respect to the intertwined relationship between Ally Financial and ResCap: (1) ResCap's Chairman and Ally Financial's CEO, Eric Feldstein; and (2) Ally Financial's CFO and a director of ResCap, Sanjiv Khattri. In fact, the 2005 Operating Agreement, between ResCap and Ally Financial, which Ally Financial filed with the SEC, and which upon information and belief is still currently in effect, "*requires* that [ResCap's] board of directors include at least two independent directors, to be *selected by GMAC.*" Proposed Operating Agreement, Ex. 99.1 to Form 8-K, dated June 8, 2005 (emphasis added).

119. Ally Financial has continued to make additional public statements that further demonstrate its willingness to support and fund ResCap. For instance, during an investor earnings call in May 2007, Sanjiv Khattri, the Executive Vice President and Chief Financial Officer of Ally Financial, repeatedly made statements that Ally Financial's board of directors "will take whatever reasonable efforts that need to be done to maintain [ResCap's] earnings." Ally Financial's Q1 2007 Earnings Call at 24 (May 2, 2007). Khattri pointed to the fact that "the [Ally Financial] Board ... and [Ally Financial] did not hesitate to inject a billion dollars of equity when it was appropriate . . . ." Ally Financial's Q2 2007 Earnings Call at 9 (July 30, 2007). Khattri unequivocally stated that "all I can assure you [is] that if you look at the strategic plan of [Ally Financial], a strong ResCap with an investment grade rating is a key part of our plan and a key part of our value creation." *Id.* Thus, Ally Financial's senior management assured the

market that Ally Financial was supporting ResCap for the purposes of Ally Financial's own "value creation."

120. Indeed, Ally Financial's 2011 annual report states that "ResCap remains heavily dependent on [Ally Financial] and its affiliates for funding and capital support." Ally. Fin. Inc., Annual Report (Form 10-K), at 128 (Feb. 28, 2012).

121. Further, Ally Financial has established a "Mortgage Repurchase Reserve" account for the potentially significant liabilities stemming from repurchase demands made on its mortgage-related subsidiary business units. The balance of the Mortgage Repurchase Reserve was \$825 million as of the fourth quarter of 2011. See Ally Financial's Q4 2011 Earnings Presentation at 16. Although these repurchase demands are generally made on Ally Financial's subsidiaries—such as GMACM—in discussing the reserve on an earnings call, Ally Financial CFO Jim Mackey made clear that it was Ally Financial that was recording "repurchase expense[s]" related to mortgages, as he stated that Ally Financial "had lower mortgage repurchase expense of \$44 million." Ally Financial's Q4 2011 Earnings Call at 4 (Feb. 2, 2012).

122. Similarly, in discussing Ally Financial's Mortgage Repurchase Reserve on Ally Financial's third quarter 2011 earnings call, Mackey further described losses attributable to mortgage loan repurchases as belonging to Ally Financial when he stated: "Our mortgage repurchase reserve is [as it then stood] \$829 million . . . . Our loss experience improved during the quarter due to the fact that we had fewer mortgage insurance rescission payments that we experienced last quarter and that did not repeat this quarter." Ally Financial's Q3 2011 Earnings Call at 6 (Nov. 2, 2011). On the same call, Ally Financial CEO Carpenter explained that "we have routinely repurchased problem loans voluntarily and by contract . . . ." *Id.* at 8.

123. Ally Financial describes its subsidiaries as its own business units rather than separate and distinct entities. For example, Ally Financial declares, in a section of its website specifically intended to inform investors, that GMACM is a “business unit” of Ally Financial rather than an indirect subsidiary owned by ResCap. *See* Ally Financial Website, Ally Home, About Ally, *available at* <http://www.ally.com/about/investor/> (last visited May 7, 2012).

124. In addition to the domination and control Ally Financial exerts over its mortgage units, ResCap also viewed GMACM and RFC as part of its own business. For example, in its investor presentation from 2007, ResCap declares that GMACM and RFC “are owned and *operated* by GMAC Residential Capital Company, LLC [ResCap].” It further states that ResCap “is part of the [Ally Financial] family of companies.” As discussed above, Ally Financial dominates and controls ResCap. Upon information and belief, when Ally Financial was not directly controlling GMACM and RFC, it used ResCap as an instrument to do so.

125. Ally Financial is currently using its subsidiaries’ resources as its own in order to earn favorable ratings by credit rating agencies. For instance, a report put out by Moody’s in November 2011 rated Ally Financial as an “above average” originator of mortgage loans. It is evident from that report that Ally Financial obtained such a rating by providing information related to its mortgage units, including GMACM and Ally Bank. Ally Financial itself is not engaged in the mortgage loan origination business. Instead, it is using its mortgage units as instruments to obtain more favorable ratings.

#### CAUSES OF ACTION

##### **Claim 1: Breach of Contract Against GMACM, RAMP, ResCap, and Ally Financial**

126. AGM re-alleges and incorporates by reference each paragraph above.

127. The 2004-HE3 I&I is a valid contract entered between AGM, and GMACM and RAMP. By its terms, the 2004-HE3 I&I essentially incorporates the representations, warranties and covenants made by the GMAC Entities in the 2004-HE3 MLPA and the 2004-HE3 SA.

128. AGM has performed all of its obligations under the 2004-HE3 I&I and the Policy.

129. As detailed more fully above, GMACM and RAMP failed to perform under the 2004-HE3 I&I, the 2004-HE3 MLPA, and the 2004-HE3 SA by, amongst other things: breaching certain representations and warranties contained in the 2004-HE3 I&I, the 2004-HE3 MLPA, and the 2004-HE3 SA; breaching the repurchase/cure provisions in the 2004-HE3 I&I, the 2004-HE3 MLPA, and the 2004-HE3 SA; failing to provide proper notice of Subsequent Mortgage Loan transfers under the 2004-HE3 MLPA; failing to provide documents as required under the 2004-HE3 I&I and 2004-HE3 SA; and breaching the reimbursement and indemnification provisions found in the 2004-HE3 I&I. This list is not exhaustive of the breaches that, on a full record, GMACM and RAMP will be shown to have committed.

130. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled GMACM's and RAMP's actions as set forth in this cause of action.

131. As a result, AGM has suffered damages in an amount to be determined at trial, but which include, at a minimum, any payments made to holders of the 2004-HE3 securities covered under the Policy.

**Claim 2: Breach of Contract Against RFC, RFMS, ResCap, and Ally Financial**

132. AGM re-alleges and incorporates by reference each paragraph above.

133. The 2006-HSA3 I&I is a valid contract entered between AGM, and RFC and RFMS. By its terms, the 2006-HSA3 I&I incorporates the representations and warranties of the 2006-HSA3 HELPA and 2006-HSA3 SA.

134. AGM has performed all of its obligations under the 2006-HSA3 I&I and the Policy.

135. As detailed more fully above, RFC and RFMS have failed to perform under the 2006-HSA3 I&I by, amongst other things: breaching certain representations and warranties contained in the 2006-HSA3 HELPA, the 2006-HSA3 SA, and the 2006-HSA3 I&I; breaching the repurchase/substitution provisions in the 2006-HSA3 HELPA, the 2006-HSA3 SA, and the 2006-HSA3 I&I; and breaching the reimbursement and indemnification provisions found in the 2006-HSA3 I&I. This list is not exhaustive of the breaches that, on a full record, RFC and RFMS will be shown to have committed.

136. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled RFC's and RFMS's actions as set forth in this cause of action.

137. As a result, AGM has suffered damages in an amount to be determined at trial, but which include, at a minimum, any payments made to holders of the 2006-HSA3 securities covered under the Policy.

**Claim 3: Breach of Contract Against Ally Bank, ResCap, and Ally Financial**

138. AGM re-alleges and incorporates by reference each paragraph above.

139. The 2004-HE3 Custodial Agreement is a valid and binding agreement between the parties thereto.

140. AGM is an express third-party beneficiary of the Custodial Agreement.

141. As explained above, Ally Bank has materially breached its obligations under the Custodial Agreement by failing to provide documents relating to Subsequent Mortgage Loan transfers to AGM and by failing to notify AGM of GMACM's breaches of its representations and warranties.



142. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled Ally Bank's actions as set forth in this cause of action.

143. As a result of these breaches of contract, AGM has been damaged and will continue to be damaged in an amount to be determined at trial.

**Claim 4: Breach of Contract Against GMACM, ResCap, and Ally Financial**

144. AGM re-alleges and incorporates by reference each paragraph above.

145. The 2004-HE3 SA is a valid contract entered between AGM and GMACM.

146. AGM has performed all of its obligations under the 2004-HE3 SA.

147. As detailed more fully above, GMACM has failed to perform under the 2004-HE3 SA by, amongst other things: breaching its servicing obligations, including the terms referred to in Section 2.01; and failing to provide documents as required under the 2004-HE3 SA. This list is not exhaustive of the breaches that, on a full record, GMACM will be shown to have committed.

148. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled GMACM's actions as set forth in this cause of action.

149. Each of GMACM's acts of breaching its servicing obligations under the 2004-HE3 SA was committed with misfeasance, bad faith, or gross negligence in the performance of its duties as Servicer or with reckless disregard of the obligations of the Servicer.

150. As a result, AGM has suffered damages in an amount to be determined at trial, but which include, at a minimum, any payments made to holders of the 2004-HE3 securities covered by the governing Policy.

**Claim 5: Breach of Contract Against RFC, ResCap, and Ally Financial**

151. AGM re-alleges and incorporates by reference each paragraph above.

152. The 2006-HSA3 SA is a valid contract entered between AGM and RFC.

153. AGM has performed all of its obligations under the 2006-HSA3 SA.

154. As detailed more fully above, RFC has failed to perform under 2006-HSA3 SA by, amongst other things: breaching its servicing obligations, including the terms referred to in Section 2.01; and failing to provide documents as required under the 2006-HSA3 SA. This list is not exhaustive of the breaches that, on a full record, RFC will be shown to have committed.

155. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled RFC's actions as set forth in this cause of action.

156. Each of RFC's acts of breaching its servicing obligations under the 2006-HSA3 SA was committed with misfeasance, bad faith, or gross negligence in the performance of its duties as Servicer or with reckless disregard of the obligations of the Servicer.

157. As a result, AGM has suffered damages in an amount to be determined at trial, but which include, at a minimum, any payments made to holders of the 2006-HSA securities covered by the Policy.

**Claim 6: Reimbursement Against GMACM, RAMP, ResCap, and Ally Financial**

158. AGM re-alleges and incorporates by reference each paragraph above.

159. Pursuant to Section 3.03 of the 2004-HE3 I&I, AGM is entitled to reimbursement for all of its claims, losses, liabilities, demands, damages, costs, and expenses of any nature whatsoever relating to GMACM's and RAMP's breaches of representations, warranties, or covenants contained in the 2004-HE3 MLPA, 2004-HE3 SA, and 2004-HE3 I&I.

160. As detailed more fully above and as will be presented at trial, GMACM and RAMP have breached numerous representations, warranties, and covenants that have caused and will cause AGM to incur losses, costs, and/or expenses, in an amount to be determined at trial. AGM's costs and expenses include attorneys' fees and expert fees, incurred and to be incurred in

order to enforce, defend, and preserve AGM's rights under the 2004-HE3 MLPA, 2004-HE3 SA, and 2004-HE3 I&I.

161. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled GMACM's and RAMP's actions as set forth in this cause of action.

**Claim 7: Indemnification Against GMACM, RAMP, ResCap, and Ally Financial**

162. AGM re-alleges and incorporates by reference each paragraph above.

163. Pursuant to Section 3.04 of the 2004-HE3 I&I, AGM is entitled to indemnification for all of its claims, losses, liabilities, demands, damages, costs, and expenses of any nature whatsoever relating to GMACM's and RAMP's breaches of representations, warranties, or covenants contained in the 2004-HE3 MLPA, 2004-HE3 SA, and 2004-HE3 I&I.

164. As detailed more fully above and as will be presented at trial, GMACM and RAMP have breached numerous representations, warranties, and covenants that have caused and will cause AGM to incur losses, costs, and/or expenses, in an amount to be determined at trial. AGM's costs and expenses include attorneys' fees and expert fees, incurred and to be incurred in order to enforce, defend, and preserve AGM's rights under the 2004-HE3 MLPA, 2004-HE3 SA, and 2004-HE3 I&I.

165. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled GMACM's and RAMP's actions as set forth in this cause of action.

**Claim 8: Reimbursement Against RFC, RFMS, ResCap, and Ally Financial**

166. AGM re-alleges and incorporates by reference each paragraph above.

167. Pursuant to Section 3.03 of the 2006-HSA3 I&I, AGM is entitled to reimbursement for all of its claims, losses, liabilities, demands, damages, costs, and expenses of any nature whatsoever relating to RFC's and RFMS's breaches of representations, warranties, or covenants contained in the 2006-HSA3 HELPA, 2006-HSA3 SA, and 2006-HSA3 I&I.

168. As detailed more fully above and as will be presented at trial, RFC and RFMS have breached numerous representations, warranties, and covenants that have caused and will cause AGM to incur losses, costs, and/or expenses, in an amount to be determined at trial. AGM's costs and expenses include attorneys' fees and expert fees, incurred and to be incurred in order to enforce, defend, and preserve AGM's rights under the 2006-HSA3 HELPA, 2006-HSA3 SA, and 2006-HSA3 I&I.

169. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled RFC's and RFMS's actions as set forth in this cause of action.

**Claim 9: Indemnification Against RFC, RFMS, ResCap, and Ally Financial**

170. AGM re-alleges and incorporates by reference each paragraph above.

171. Pursuant to Section 3.04 of the 2006-HSA3 I&I, AGM is entitled to indemnification for all of its claims, losses, liabilities, demands, damages, costs, and expenses of any nature whatsoever relating to RFC's and RFMS's breaches of representations, warranties, or covenants contained in the 2006-HSA3 HELPA, 2006-HSA3 SA, and 2006-HSA3 I&I.

172. As detailed more fully above and as will be presented at trial, RFC and RFMS have breached numerous representations, warranties, and covenants that have caused and will cause AGM to incur losses, costs, and/or expenses, in an amount to be determined at trial. AGM's costs and expenses include attorneys' fees and expert fees, incurred and to be incurred in order to enforce, defend, and preserve AGM's rights under the 2006-HSA3 HELPA, 2006-HSA3 SA, and 2006-HSA3 I&I.

173. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled RFC's and RFMS's actions as set forth in this cause of action.

**PRAYER FOR RELIEF**

174. AGM respectfully prays that this Court, cumulatively or alternatively:

(a) Award compensatory and consequential damages, and any other present and future damages to be proven at trial;

(b) Award a sum to be determined at trial to compensate AGM for its issuance of the Policies resulting from the Defendants' misrepresentations in the documents underlying the 2004-HE3 and 2006-HSA3 transactions and compensation for AGM's guarantee of certain payments of principal and interest on securities backed by a substantial number of mortgage loans that were underwritten in violation of relevant underwriting guidelines; were originated through misrepresentations, error, omissions, or negligence; and/or concerning which there were defects or deficiencies in the underlying loan documents;

(c) Order the GMAC Entities to comply with the reimbursement and indemnification provisions of the relevant agreements;

(d) Order reimbursement and indemnification for AGM's losses and expenses related to the GMAC Entities' breaches of their representations, warranties, and covenants, including attorneys' fees, expert expenses, and other costs;

(e) Order prejudgment interest pursuant to federal law and New York Civil Practice Law & Rules §§ 5001-5004; and

(f) Order such other legal and equitable relief as this Court deems proper.

Dated: May 11, 2012

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