

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

ACE SECURITIES CORP. HOME EQUITY LOAN
TRUST, SERIES 2007-WM1, by HSBC Bank USA,
National Association, as Trustee,

Plaintiff,

-against-

DB STRUCTURED PRODUCTS, INC.,

Defendant.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff ACE Securities Corp. Home Equity Loan Trust, Series 2007-WM1 (the “Trust” or “Plaintiff”), by and through HSBC Bank USA, National Association, as trustee (the “Trustee”), and its attorneys, Holwell Shuster & Goldberg LLP, and at the direction of certain holders of, residential mortgage-backed securities issued by the Trust as and for its Complaint against DB Structured Products, Inc. (“DBSP” or the “Defendant”), alleges as follows:

NATURE OF ACTION

1. This action arises out of DBSP’s breaches of contract relating to a pool of mortgage loans (the “Mortgage Loans”) that DBSP securitized and sold to the Trust, and from which the Certificates derive their value. As the “sponsor” of the securitization, DBSP, among other things, played the critical role of selecting the approximately 4,591 Mortgage Loans that are the primary source of revenue for payments on, and that also collateralize, the certificates issued by the Trust (the “Certificates”). To ensure that the Certificates would be marketable securities, DBSP (i) made numerous representations and warranties concerning the origination and characteristics of each and every one of the Mortgage Loans, and (ii) upon discovery of any material breach, it undertook to cure the breach, or if unable to cure, to repurchase the Mortgage

Loan or substitute a non-breaching loan. As has now become clear, DBSP breached these representations and warranties on the day it executed the agreements containing them, and it has since breached its continuing covenant to cure, substitute, or repurchase the breaching Mortgage Loans.

2. After an exhaustive (and expensive) loan file by loan file forensic review initiated by certain Certificateholders, the Trustee received several notices indicating that a massive number of the 2,870 loans designed as “Group II Mortgage Loans”¹ – an aggregate of at least 2,197 – breached DBSP’s representations and warranties, which breaches materially and adversely affected the value of the loans or the interests of the Trust or the holders of Certificates (the “Certificateholders”) in such loans. Upon receiving each notice, the Trustee promptly notified DBSP of the breaches specified therein, furnishing it with considerable loan-level supporting detail – despite no obligation to do so – and demanding that DBSP fulfill its obligations to cure the breaches or repurchase the loans. DBSP has failed to do so.

3. On information and belief, DBSP performed due diligence on the Mortgage Loans before acquiring them for the securitization and had discovered at the time of the securitization that large numbers of the Mortgage Loans failed to satisfy its representations and warranties. At that time, DBSP was required to cure the breaches, substitute in non-breaching loans of equivalent value, or repurchase the breaching Mortgage Loans. It failed to do so.

4. Even after receiving exhaustively detailed descriptions of each of the breaches from the Trustee, DBSP has failed to cure a single breach or repurchase a single loan. Left with no other option, the Trustee now brings this action. DBSP’s conveyance to the Trust of a

¹ The Group II Mortgage Loans were comprised of fixed-rate and adjustable-rate mortgage loans with an aggregate principal balance of approximately \$583,697,375 as of January 1, 2007. The principal balances of the Group II Mortgage Loans at origination were not required to conform to Freddie Mac loan limits.

massive number of breaching Mortgage Loans, its breaches of its representations and warranties, and its failure and refusal to comply with its covenant to cure the breaches or repurchase the Mortgage Loans defeat the fundamental purpose of the relevant agreements and entitle the Trust to rescissory damages, breach of contract damages, specific performance, and reimbursement of the substantial expenses the Trustee has been forced by DBSP to incur in enforcing the Trust's rights and in bringing this action.

5. DBSP's breaches go to the very heart of the relevant agreements. Among other things, its representations and warranties concerning the Mortgage Loans played a central role in allocating risk between DBSP and the Trust. By making dozens of representations and warranties relating to the characteristics and risk profile of the Mortgage Loans and promising to cure or repurchase breaching loans, DBSP assumed the risk that the loans it selected for securitization, and into which it had unique access and insight, failed to have the represented characteristics or carry the represented risk profile. DBSP's representations, warranties, and promises were made for the benefit of the Trust and the Certificateholders. Without DBSP's contractual promises and undertakings, which were in general terms standard requirements in mortgage loan securitizations, the Certificates would not have been marketable, and investors would not have supplied, in purchasing the Certificates, the hundreds of millions of dollars that not only paid the fees of DBSP and its affiliates, but also enabled DBSP to securitize the Mortgage Loans and sell them to the Trust.²

6. The following are but a few of the representations and warranties made by DBSP:

- "No error, omission, misrepresentation, fraud or similar occurrence with respect to a Mortgage Loan has taken place on the part of any person involved in the

² According to the Prospectus Supplement for this deal, the Depositor offered \$834,163,000 of Certificates; the proceeds paid to the Depositor were 99.67% of that amount, or \$831,410,262.10, minus expenses.

origination of the Mortgage Loan . . . or in the application of any insurance in relation to such Mortgage Loan”;

- “There is no material default, breach, violation event or event of acceleration existing under the Mortgage or the Mortgage Note and no event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a material default, breach, violation or event of acceleration, and the Seller has not, nor has its predecessors, waived any material default, breach, violation or event of acceleration”;³ and
- “The Mortgage Loans were underwritten in accordance with the originator’s underwriting guidelines in effect at the time the Mortgage Loans were originated (the ‘Applicable Underwriting Guidelines’), except with respect to certain of those Mortgage Loans which had compensating factors permitting a deviation from the Applicable Underwriting Guidelines.”⁴

7. These and other representations and warranties were not mere contractual boilerplate: they were essential contract terms, without which the Certificates would not have been marketable. In transferring at least 2,197 loans to the Trust that breached these and other representations and warranties, and later refusing to actually cure, substitute, or repurchase them, DBSP fundamentally altered the bargain it struck in the governing documents. A core feature – if not *the* core feature – of that bargain was that DBSP, not the Trust or Certificateholders, should bear the risk of defective Mortgage Loans.

8. One of several reasons why DBSP assumed the risk of defective loans is that DBSP had unique insight into and information concerning the Mortgage Loans – information that was not available to investors or the market at large. *First*, DBSP had direct contact with the mortgage loan origination company, from which it purchased the loans for inclusion in the

³ Defaults under the Mortgage or Deed of Trust include the provision by the borrower of inaccurate information concerning the borrower’s income, employment, indebtedness, and place of residence. Example language includes: “Borrower shall be in default if, during the loan application process, Borrower or any persons or entities acting at the direction of the Borrower or with Borrower’s knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan”

⁴ For each defective loan discussed herein, compensating factors were not documented, did not exist, or were inadequate. *See infra* at fn 10.

securitization. *Second*, DBSP selected the loans it wished to securitize. *Third*, DBSP had unrestricted access to the documentation associated with each loan and was free to review this documentation as it wished, and upon information and belief, did review this documentation in sufficient detail to put itself in a position to make specific and wide-ranging representations and warranties concerning each and every one of the loans.

9. Given its unique vantage point as the securitization sponsor with control over which loans were selected for securitization and with access to the underlying information pertaining to such loans, DBSP was the *only* transaction party that was in a position to accept the risks associated with defects in the Mortgage Loans, including the underwriting process itself. Moreover, it was market practice for responsible parties, such as the securitization sponsor, to accept those risks, and DBSP did so. Specifically, DBSP assumed the risk that the Mortgage Loans were originated in violation of the applicable mortgage loan underwriting standards, were fraudulently originated, involved borrower misrepresentation (and outright deception) or breached any other representation or warranty.

10. The repurchase remedy the parties provided for clearly contemplated that breaching Mortgage Loans would be few in number, and that remedying the breaches via the cure or repurchase remedy would be a streamlined procedure. Thus, the Mortgage Loan Purchase Agreement (the “MLPA”)⁵ provides that, upon discovery of a breach or receipt of a breach notice, DBSP “*shall . . . cure such defect or breach in all material respects or, in the event [DBSP] cannot . . . cure such defect or breach, [DBSP] shall, within ninety (90) days of its discovery or receipt of notice of . . . any such breach . . . repurchase the affected Mortgage Loan*

⁵ DBSP’s representations, warranties and promise to repurchase are contained in the MLPA and incorporated into the Pooling and Servicing Agreement (“PSA,” as defined herein). Copies of the MLPA and PSA are attached hereto as Exhibits A and B, respectively.

at the Purchase Price.”⁶ *Id.* § 7(a) (emphasis added). DBSP thus agreed that (i) its own discovery of a breach or receipt of a simple notice triggers its cure/substitution/repurchase obligation; and (ii) with respect to any notice, only the most basic information identifying the defective loan and the fact that it breached a representation or warranty need be included in any breach notice.

11. On information and belief, DSBP conducted its own due diligence on the Mortgage Loans in connection with their acquisition and thereby discovered a material number of breaches subsequently discovered by the forensic review conducted by Certificateholders (the “Forensic Review”). The Forensic Review revealed that more than 95 percent of the Mortgage Loans reviewed – more than nine out of ten – breached DBSP’s representations and warranties. In all, the Forensic Review uncovered approximately 9,227 separate breaches on 2,197 loans out of 2,310 reviewed, most of which involved inaccuracies as to such core matters as borrower income, employment, intended occupancy of the subject property, and other indebtedness. In other words, the Forensic Review determined that borrowers or others involved in the origination process provided inaccurate information concerning how much money borrowers owed, how much money they made, whether and where they worked, and whether they intended to reside in the mortgage property, and other matters that breached DBSP’s representations and warranties.

12. DBSP’s discovery of the breaches carried through to the closing of the securitization transaction and beyond that date, such that DBSP had an obligation on day one to cure the breaches, substitute non-breaching loans for the breaching loans, or repurchase the breaching loans.

⁶ For a limited period of time after closing, the MLPA and PSA also permitted DBSP to replace any such affected Mortgage Loan with a qualified substitute loan.

13. Moreover, the parties' agreements make crystal clear that, whether or not it had discovered breaches when it made its representations and warranties, having been notified of the breaches by the Trustee, DBSP was required to cure the breaches or repurchase the breaching loans.⁷

14. In contrast to the myriad obligations imposed on DBSP, neither the Trust, the Trustee, nor any private Certificateholder was required at any time to verify the accuracy of DBSP's representations and warranties or to determine whether any of them had been breached. The Certificateholder that caused the Forensic Review to be performed did so on its own initiative and at its own initial expense, despite having no obligation to do so. Indeed, the agreements provide that any failure by the Trust or the Certificateholders to conduct a "review and examination of loan files or other documents evidencing or relating to the Mortgage Loans" shall not impair or otherwise render unenforceable DBSP's representations and warranties concerning the Mortgage Loans. MLPA § 7(a).

15. The massive number of defective loans that DBSP sold to the Trust far exceeds anything contemplated by the agreements. A handful of defective loans (together with a handful of cures, substitutions, or repurchases) in a pool of approximately 4,591 mortgage loans is perhaps to be expected. Thousands of defective loans, many of which DBSP discovered prior to closing, are not. DBSP's conveyance of a Mortgage Loan pool permeated with breaching loans, and its failure to cure, substitute, and/or repurchase are all fundamental, willful, and intentional breaches of the parties' agreements.

⁷ Because DBSP's discovery of the breaching mortgage loans was within two years of the securitization's closing date, DBSP originally had the option to substitute for the breaching loans – an option now lost.

16. DBSP's fundamental and willful breaches did not end with its conveyance to the Trust of breaching Mortgage Loans in vast numbers. DBSP thereafter failed to perform its cure and repurchase obligations even when the Trustee provided to DBSP notice of its breaches. Indeed, far from curing or repurchasing the entire array of breaching loans – which would have meant repurchasing a substantial portion of the Mortgage Loan pool – DBSP has refused to repurchase even a single loan.

17. DBSP's breaches of contract are so numerous, fundamental, and substantial that they frustrate and defeat the central purpose of the parties' agreements. Without DBSP's representations, warranties, and promises to cure or repurchase, ratings could not have been assigned to the Certificates, investors could not have evaluated potential investments, transaction parties could not have signed on to the deal, and DBSP itself could not have effected a securitization that produced staggering dollar amounts of sales proceeds. Without these contractual commitments, based on market custom and practice, there would not have been a securitization. And while a handful of breaches of these commitments might have come within the parties' expectations (along with the cure, substitution, and/or repurchase of that handful of loans), the cumulative effect of some 9,227 breaches on at least 2,197 loans completely upsets the reasonable expectations of the parties and renders unrecognizable the original securitization. Indeed, such numerous breaches make recourse to the repurchase remedy impractical because it was never designed to resolve disputes over more than a handful of loans. Because the very essence of the investors' bargain has been irrevocably altered, the Trustee is entitled to rescissory damages.

18. In the alternative, even if DBSP's breaches are not adjudged as a whole to be so fundamental as to warrant the award of rescissory damages on the transaction, each breach by

DBSP of a representation and warranty regarding a specific Mortgage Loan is actionable by the Trustee herein, as is DBSP's breach of its cure, substitution, and repurchase obligations, and each such breach entitles the Trust to compensatory damages.

19. In the alternative, the Trust is entitled to specific performance of DBSP's obligation to cure and/or repurchase the breaching Mortgage Loans and any other Mortgage Loans identified as being in breach of DBSP's representations and warranties.

20. In addition to the remedies sought with respect to DBSP's breaches of the parties' agreements, the Trust is further entitled to, and seeks herein, a declaration that DBSP is required to reimburse the Trustee for all costs and expenses incurred in enforcing the Trust's rights, including, but not limited to, attorneys' fees and costs.

PARTIES

21. HSBC is a national banking association. HSBC's registered main office is in McLean, Virginia and its principal executive office is in New York, New York. HSBC participates in this action solely in its capacity as Trustee of the Trust, and not in its individual capacity.

22. ACE Securities Corp., Home Equity Loan Trust, Series 2007-WM1, is a securitization trust created pursuant to the Pooling and Servicing Agreement dated as of January 1, 2007 (the "PSA"). The PSA was and is governed by New York law.

23. HSBC, acting solely in its capacity as Trustee and on behalf of the Trust, has assumed and undertaken the conduct of this litigation pursuant to the direction of certain private Certificateholders. Upon information and belief, Defendant DBSP is a corporation organized under the laws of the State of Delaware, with its principal place of business at 60 Wall Street, New York, New York. DBSP acted as the Sponsor for the Trust and is owned and controlled by

Deutsche Bank, AG, a German corporation with its principal place of business in Frankfurt, Germany.

JURISDICTION AND VENUE

24. The Court has jurisdiction over this proceeding pursuant to CPLR §§ 301 and 302 because the Defendant is a foreign corporation with its principal office within New York State. Additionally, DBSP made the relevant representations and warranties, and undertook the relevant obligations, in agreements expressly governed by New York choice-of-law clauses.

25. Venue is proper in this Court pursuant to CPLR § 503(a) and (c) and because the Trustee's principal executive office is in New York County and because DBSP is a foreign corporation authorized to transact business in the State of New York with its principal New York offices in New York County.

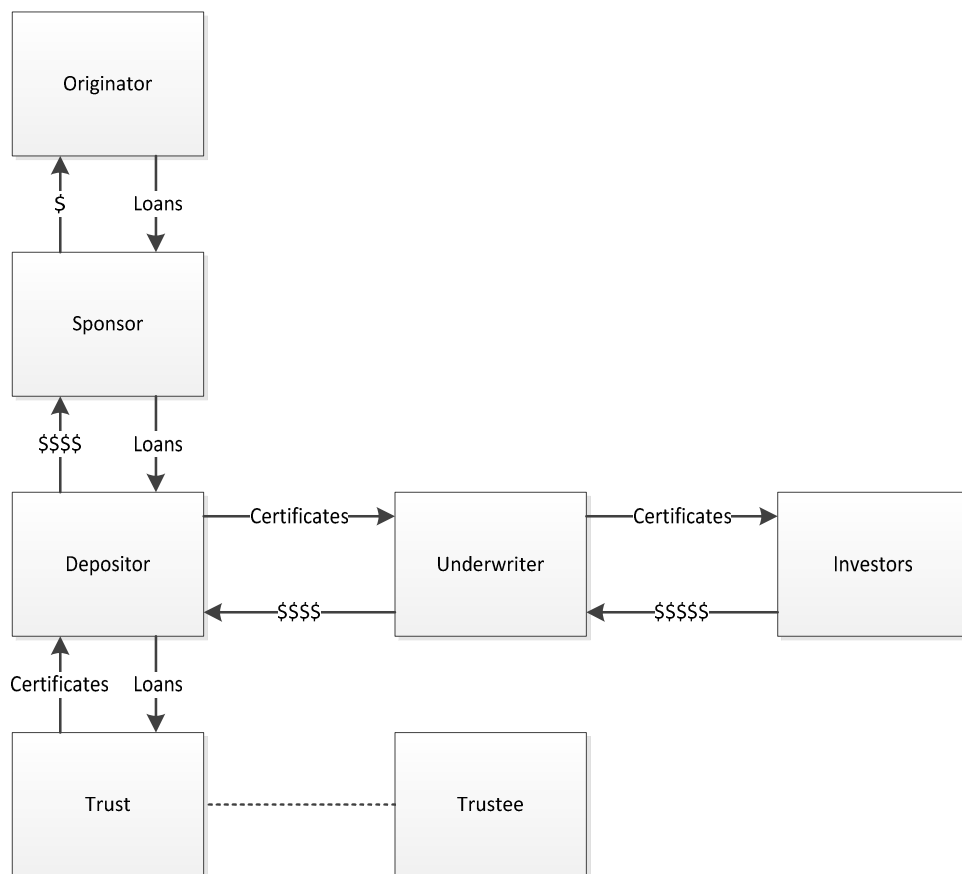
FACTUAL ALLEGATIONS

I. RMBS Securitizations Generally

26. A securitization of residential mortgage loans is a structured finance transaction. Generally, in such a securitization, the following transfers happen contemporaneously (and sometimes simultaneously) so that mortgage loans can be sold and money can be raised to pay for such loans: (i) the securitization's sponsor purchases a large number of mortgage loans from one or more mortgage loan originators (or mortgage loan underwriters); (ii) the sponsor sells the loans to a special purpose vehicle known as a "depositor," typically a bankruptcy-remote, limited purpose entity, which may have been created by, or is affiliated with, the sponsor purely to effectuate such securitizations; (iii) the depositor sells the "pool" of mortgage loans to a trust entity and "deposits" the loans into that trust; (iv) the trust, another special purpose entity, issues securities, known as "certificates" or residential mortgage-backed securities ("RMBS"), for sale to investors, which it conveys to the depositor in exchange for the loans; (v) the depositor sells

certificates to an underwriter in exchange for cash, which the underwriter has received from investors; and (vi) the depositor uses that cash to pay the sponsor for the mortgage loans.

27. The trust, and the trustee on behalf of the trust, holds those loans for the benefit of the holders of the certificates. The following diagram illustrates this typical arrangement:



28. RMBS are only as good as the mortgage loans underlying them. The characteristics and risk profiles of those mortgage loans drive the capital structure of the securitization, including the interest rates the certificates pay, the prices and principal balances of certificates that can be issued with the highest rating (and accordingly, the lowest interest rate), and the extent of protections or credit enhancement built into the securitization (*e.g.*, extra cash

reserves or subordinate securities that will bear losses first). Of course, loans that appear less risky translate to higher sales proceeds for the seller.

29. RMBS also derive their value and marketability from the underlying mortgage loans because the source of the payment stream on the RMBS is the cash flows generated by those loans. As borrowers make payments on the underlying mortgage loans, those funds are “passed through” to investors holding the RMBS. Investors receive distributions in accordance with related securitization documents.

30. Because promised payments on RMBS are based on the cash flow from the mortgage loans, the value of the RMBS is directly contingent on, among other things, the characteristics and quality of the mortgage loans, including the mortgage loans’ underwriting process, the creditworthiness of the applicable borrowers, and the information provided by the borrowers when obtaining the mortgage loans. For residential mortgage loans, this information is usually contained in a loan file, which includes information the originator accumulates and analyzes while underwriting and issuing the loans. The loan origination and servicing files generally are available to the sponsor, which is responsible for, among other things, selecting which loans to include in the securitization.

31. Typically, the sponsor performs some form of review of the loan origination files and is well acquainted with the characteristics of the loans. Critical information about the characteristics of the mortgage loans is contained in the loan origination files that the mortgage originator developed while originating the loans. Each file typically contains the borrower’s application for the loan and documents with statements attesting to various matters specified therein, including the borrower’s income, assets, debts, and employment. The file also includes the borrower’s credit reports, an appraisal of the property that will secure the loan, and

statements concerning the borrower's intent to occupy (or not occupy) the mortgaged property. Finally, the file also typically contains the record of the originator's investigation of documents and information provided by the borrower, as well as the detailed notes of the underwriter setting forth the rationale for advancing credit to the borrower.

32. The loan files are not, however, generally available to investors in the RMBS prior to purchase.⁸ Instead of loan files, which are voluminous and contain confidential material, investors typically are provided with mortgage loan data and representations and warranties, each of which is intended to contain numerous characteristics of the mortgage loans.

33. In addition to the quality of the loans themselves, certain characteristics of a securitization are essential to their marketability in the primary and secondary markets, including: (i) the contractual right to payment (among other contractual rights) embedded in transaction documents; (ii) representations, warranties, and covenants of the institutions that participate in the RMBS market (including sponsors such as DBSP); (iii) the perceived ability and intention of those institutions to live up to their contractual obligations; and (iv) the assignment of responsibilities to transaction parties pursuant to the transaction documents. Among other things, these essential characteristics allow ratings to be assigned to RMBS investments.

34. The relevant agreements in an RMBS securitization typically include a mortgage loan purchase agreement (or similar document), which provides for the sale of the loans by the sponsor to the depositor and contemplates the transfer of the loans by the depositor to the trust, and a pooling and servicing agreement, which among other things provides for the transfer of the

⁸ Indeed, even after purchase, investors only receive the right to request access to the loan files and only then if they can gather sufficient voting rights from their fellow investors, a process that can require substantial and significant effort by certificateholders.

loans by the depositor to the trust and establishes the trust itself. Representations and warranties by a responsible party and concerning the mortgage loans are generally set forth in one or both of those agreements. Invariably, the pooling and servicing agreement and mortgage loan purchase agreement make it clear that the responsible party – here, DBSP, the Sponsor – is solely responsible for the risk of inaccuracies in its representations and warranties concerning the mortgage loans.

35. The typical pooling and servicing agreement and mortgage loan purchase agreement further provide what is intended to be a straightforward commercial procedure should any mortgage loan breach the responsible party's representations and warranties. Essentially, when the responsible party discovers a breach with regard to a specific mortgage loan, the responsible party is required either to cure the breach within a short time period, typically 60 to 90 days, or to replace or repurchase the breaching mortgage loan within a similarly short time period, typically 90 days.

36. The procedure set forth in the parties' agreements for the responsible party to cure or repurchase a mortgage loan that breaches the representations and warranties is intended to benefit the trust (and therefore investors) by providing for a straightforward, streamlined commercial remedy for the sponsor's conveyance to the trust of a mortgage loan that does not meet the requirements set forth in the representations and warranties. In fact, the process is intended to be incredibly simple. Once it discovers or is notified of a breach of a representation and warranty, the responsible party is contractually obligated to cure the breach or repurchase the mortgage loan. For example, if a borrower had fraudulently misrepresented his/her debts on his/her loan application, such misrepresentation would be a breach of, at least, a "no material default" and/or "no fraud" representation. Because the past cannot be changed – *i.e.*, the

borrower cannot retrospectively wipe out the undisclosed debts as of the time of the loan, the responsible party must either cure the breach or repurchase the loan. This no-frills procedure is consistent with the fact that, prior to the closing of the transaction, the responsible party had access to the loan file and the ability not to include such a loan in the securitization.

37. The streamlined time period for the responsible party to remedy its breach also reflects the trust's, trustee's, and certificateholders' reasonable expectation that breaching loans will be few in number, that breaches can be quickly and efficiently addressed, and that a trust should not be put in the position that this Trust has been – forced to demand the repurchase of at least 2,197 loans by the Sponsor and then forced to sue because the Sponsor has frustrated any effort by the Trust to enforce the contractually provided-for commercial remedy.

II. The ACE 2007-WM1 Securitization

38. DBSP was the Sponsor of the securitization at issue here. DBSP acquired the Mortgage Loans from a third-party originator. As such, after selecting the approximately 4,591 Mortgage Loans that it acquired from the third-party originator, DBSP resold those mortgage loans to the depositor, an entity called ACE Securities Corporation (“ACE” or “Depositor”). The Depositor purchased the loans pursuant to the Mortgage Loan Purchase Agreement dated January 29, 2007 (the “MLPA”), in which DBSP was identified as the “Seller” and ACE as the “Purchaser.” The Depositor/Purchaser purchased the loans for the express purpose of selling them to, and depositing them into, the Trust, which was accomplished pursuant to a Pooling and Servicing Agreement dated as of January 1, 2007 (the “PSA”).

39. The ACE 2007-WM1 securitization was substantially similar to the typical securitization described above.⁹ The Loans were sold by the Sponsor to the Depositor at a specific price. The Depositor transferred the Mortgage Loans to the Trust in exchange for the Certificates. As set forth in the Prospectus Supplement relating to this deal, the aggregate principal balance of the Mortgage Loans sold to the Trust was approximately \$853,364,263 as of the “Cut-off Date” (a date prior to the deal’s closing date). Offered Certificates with an aggregate face value of approximately \$834,163,000 were issued by the Trust and were transferred to the Depositor. Pursuant to an underwriting agreement, the Depositor raised cash by selling those Certificates to Deutsche Bank Securities Inc., another member of the Deutsche Bank corporate family, which then sold those Certificates to investors in exchange for cash (and which received corresponding underwriting fees). The Depositor applied the net proceeds from the sale of those Certificates (as described in the Prospectus Supplement relating to the deal) against the purchase price of the Mortgage Loans it bought from DBSP. Accordingly, DBSP caused the Certificates to be issued and sold to investors so that it could be paid for its Mortgage Loans.

40. Pursuant to the PSA, the Trust holds the Mortgage Loans for the benefit of investors in the Certificates, who ultimately bear the economic consequences of the Mortgage Loans’ performance or lack of performance. The value of the Mortgage Loans, and consequently of the Certificates issued by the Trust, were and are directly contingent on, among other things, the loans’ characteristics, quality, and risk profile.

⁹ For ease of reference, attached as an Appendix is the diagram of the ACE 2007-WM1 securitization structure that appears in the Prospectus Supplement.

41. DBSP, as sponsor of the securitization and as seller of the Mortgage Loans to the Depositor, and therefore ultimately to the Trust, made a series of representations and warranties in the MLPA concerning the characteristics, quality, and risk profile of the Mortgage Loans. Those representations and warranties were and are an integral component of the securitization and therefore a critical factor in determining the value of the Mortgage Loans and the Certificates. Upon information and belief, DBSP conducted due diligence on Mortgage Loans and accompanying loan origination and servicing files before making these representations and warranties. Upon information and belief, this due diligence involved a thorough review of documentation relevant to each and every representation and warranty, or at a minimum, a significant sample of the Mortgage Loans in the Trust.

42. If any of those representations and warranties were breached with respect to any Mortgage Loan and such breach materially and adversely affected the value of the Mortgage Loan or the interests of the Trust or Certificateholders in such Mortgage Loan, DBSP promised to cure such breach or, if such breach was not cured, to repurchase the related Mortgage Loan. DBSP further agreed to certain reimbursement obligations, such as the obligation to promptly reimburse the Trustee for any expenses reasonably incurred by the Trustee in respect of enforcing the remedies for such breach. Such covenants were made as part of the consideration for the mortgage loan transfers described herein.

43. DBSP's representations and warranties regarding the Mortgage Loans, and the associated remedies to which it agreed, including cure, repurchase, and reimbursement, are the contractual manifestations of the allocation of risk agreed to by the parties to the contracts – that is, DBSP would bear the risk of the inaccuracy of its promises and the Trust would be entitled to be made whole should those representations and warranties be inaccurate (which, unfortunately,

they proved to be in many cases). (*See, e.g.*, DBSP's Form ABS-15G filed on May 15, 2012 and available at www.sec.gov.) In fact, DBSP's representations and warranties (and the associated remedies) were so essential to the effectuation of the securitization that DBSP even agreed to cure or repurchase loans breaching representations and warranties qualified by its knowledge even when it had no such knowledge.

III. A Forensic Review Revealed Breaches of DBSP's Representations and Warranties So Extensive As to Defeat the Very Purpose of the MLPA and PSA

44. Prior to commencement of this action, a private Certificateholder independently retained a firm to conduct a forensic review of the Group II Mortgage Loans in the Trust to assess whether those loans, at the time they were sold to the Trust, conformed to the representations and warranties DBSP made in the MLPA and PSA.

45. In such a forensic review, sometimes referred to as a loan "re-underwriting," a detailed, item-by-item examination is made of the documents and information contained in each loan file for each Mortgage Loan as to which the review is conducted. The documents and information are reviewed for their accuracy and compliance with DBSP's representations and warranties.

46. Here, in the Forensic Review, the loan files were provided to a third-party consultant that specializes in re-underwriting mortgage loans for compliance with applicable underwriting guidelines and other requirements. The consultant found numerous fundamental breaches, including inaccuracies, outright misrepresentations, material omissions, and other breaches, across the Mortgage Loan pool. In loan file after loan file, core information about the borrower or the property was simply wrong, misrepresented, or otherwise in breach of DBSP's representations and warranties.

47. The Forensic Review did not merely uncover breaches of DBSP's representations and warranties as to individual loans. Instead, it is now clear based on the Forensic Review that, despite its representations and warranties, DBSP simply placed into the Trust a Mortgage Loan pool that was fundamentally defective – *i.e.*, it contained voluminous breaches that materially and adversely affected the value of the Mortgage Loans or the interest of the Trust or the Certificateholders in Mortgage Loans. The numbers tell the story. The Forensic Review revealed that at least 2,197 of the 2,310 loan files reviewed – some 95 percent – did not comply with at least one of DBSP's representations and warranties, and that each loan had breaches that materially and adversely affected the value of the Mortgage Loan or the interest therein of the Trust or Certificateholders.

48. The whole purpose of DBSP's representations and warranties, and of the cure/substitution/repurchase remedy, was to ensure that the Trust did not ultimately bear the risks associated with so much as a single loan that was in breach of a single one of DBSP's representations and warranties. Yet, on day one, DBSP placed several thousand defective loans into the Trust, thereby defeating the entire premise of the agreements, of DBSP's representations and warranties, and of the Trust's remedies. This state of affairs is so far afield from the parties' original agreements as to defeat their very purpose.

A. DBSP's Representations and Warranties

49. Section 6 of the MLPA sets forth no fewer than 75 individual representations and warranties made by DBSP as Seller/Sponsor concerning the Mortgage Loans sold to the Trust. As already alleged, these representations and warranties were a core element of the securitization and of the parties' agreements, including without limitation, the agreement by the Trust to purchase the Mortgage Loans.

50. Section 6 of the MLPA sets forth the representations and warranties concerning the Mortgage Loans sold to the Trust. Those representations and warranties include, *without limitation*, the following:

SECTION 6. Representations and Warranties of the Seller Relating to the Mortgage Loans.

The Seller hereby represents and warrants to the Purchaser that as to each Mortgage Loan as of the Closing Date:

(i) Information provided to the Rating Agencies, including the loan level detail, is true and correct according to the Rating Agency requirements;

(ii) No error, omission, misrepresentation, fraud or similar occurrence with respect to a Mortgage Loan has taken place on the part of any person involved in the origination of the Mortgage Loan, including without limitation, the Mortgagor, any appraiser, any builder or developer, or any other party involved in the origination of the Mortgage Loan or in the application of any insurance in relation to such Mortgage Loan;

...

(viii) Each Mortgage Loan and the related Prepayment Charge, if any, complied in all material respects with any and all requirements of any federal, state or local law including, without limitation, usury, truth in lending, anti-predatory lending, real estate settlement procedures, consumer credit protection, equal credit opportunity, fair housing or disclosure laws applicable to the origination and servicing of the Mortgage Loans and the consummation of the transactions contemplated hereby will not involve the violation of any such laws;

...

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

...

(xxiii) The Mortgage Loans were underwritten in accordance with the originator's underwriting guidelines in effect at the time the Mortgage Loans were

originated [], except with respect to certain of those Mortgage Loans which had compensating factors permitting a deviation from the Applicable Underwriting Guidelines;

...

(lxxii) The information set forth in the Closing Schedule is true and correct in all material respects as of the Cut-off Date;

...

51. Among the events that qualified as a material default, breach, violation or event of acceleration under the documentation for a Mortgage Loan were the borrower making material misrepresentations concerning, among other things, his/her represented income, employment, and other indebtedness.

52. The PSA incorporates the express representations and warranties set forth in the MLPA and attaches that agreement as an exhibit. *See, e.g.*, PSA §§ 2.01, 2.03.

B. DBSP's Breaches of the Representations and Warranties

53. Among other breaches, the Forensic Review uncovered numerous material omissions and misrepresentations by the borrowers and conclusive evidence that the Mortgage Loans had not been originated "in accordance with the originator's underwriting guidelines." MLPA § 6(xxiii).¹⁰ The Forensic Review also revealed numerous material defaults of the mortgage notes and mortgages, including borrower misrepresentations. MLPA § 6(xiv).

54. Many of the breaches uncovered by the Forensic Review were based on misrepresentations by the borrowers concerning, among other things, income, employment, and

¹⁰ Almost all underwriting guidelines provide for "exceptions" to underwriting guidelines when certain "compensating factors" exist. These compensating factors typically include circumstances where one indication of a high-risk loan is offset by other, offsetting, information. In all circumstances alleged here, where the Forensic Review uncovered a breach of DBSP's representations and warranties based on violations of underwriting guidelines, it was determined that there were no documented compensating factors or any alleged compensating factors adequate to offset the risk.

other indebtedness. The Forensic Review found, for example, that in many cases, borrowers' listed income was inaccurate or otherwise unreasonable given the borrower's job or employment status and the geographic region where the borrower lived. The borrower's job or employment status was also frequently misrepresented. Similarly, the Forensic Review often found that information concerning the borrower's other indebtedness was inaccurate. Over and over, the mortgage loan file did not even disclose other mortgage debt from recent home purchases.

55. The Forensic Review also revealed that many of these misrepresentations could have been discovered – with the loan likely being rejected – had the Mortgage Loans been underwritten in accordance with applicable guidelines. The Forensic Review uncovered numerous instances where income, employment, and other indebtedness had not been adequately verified or where the documentation required by proper underwriting standards was materially incomplete. These underwriting lapses, intentional or otherwise, also resulted in further misrepresentations or miscalculations of other data critical to risk assessment for the Mortgage Loans. One such type of data was the debt-to-income ratio (or “DTI”), which compares a borrower's monthly debt obligations to his/her monthly income. Higher DTIs correlate with greater risk that the borrower will be unable to make good on his/her mortgage loan obligation. The Forensic Review revealed that, when the true DTIs were calculated, they often exceeded the represented DTIs and/or the maximum ratios approved by the underwriters.

56. Each noticed Mortgage Loan had at least one breach of a representation and warranty that materially and adversely affected the value of that Mortgage Loan or the interests therein of the Trust or the Certificateholders.

57. The examples below are illustrative of breaches due to borrower misrepresentations of other indebtedness, borrower misrepresentation of intended occupancy status, borrower misrepresentation of employment, and borrower misrepresentations of income:

- Mortgage Loan Number XXXXX1406: The Forensic Review uncovered evidence showing that this was a prohibited straw buyer transaction (*i.e.*, the borrower purchased the property on behalf of an individual unable to purchase the property for oneself), that there were misrepresentations as to borrower occupancy, that there were misrepresentations as to the disclosed income, and that this was not an arms-length transaction. First, the file shows that the borrower did not purchase the subject property for the borrower's own use. Rather, title documentation revealed that the borrower purchased the subject property as a foreclosure bailout. Moreover, a post-closing letter revealed that the borrower and seller were related, and that the seller continued to occupy the subject property from August 1, 2006 (the closing date of the subject property) until the seller's death on July 19, 2009. Additionally, on the loan application, the borrower stated that the borrower earned \$9,600 per month as a pastor. This income was not reasonable and should have put the underwriter on notice for potential misrepresentations, as the Forensic Review revealed that this stated income is more than two times the U.S. Bureau of Labor Statistics 75th percentile of income for a pastor in 2006. Indeed, an audit verification of employment revealed that the borrower's income in 2006 was just \$4,668 per month.
- Mortgage Loan Number XXXXX9721: The Forensic Review uncovered evidence showing that the borrower failed to disclose significant debt obligations on the loan application and that there were misrepresentations as to the disclosed income, resulting in a DTI that far exceeds the maximum permitted by the applicable loan approval. Moreover, there were additional misrepresentations as to borrower occupancy. First, the borrower failed to disclose a refinance of a rental property and a corresponding mortgage obligation the borrower had undertaken at the time of origination; thus, the borrower portrayed a false picture of the borrower's financial obligations. Specifically, the Forensic Review uncovered that on May 9, 2006, just one week prior to the closing date of the subject mortgage, the borrower completed an undisclosed refinance of a rental property, undertaking a \$211,500 mortgage with a total monthly payment of \$1,889. This debt obligation was not reflected in the borrower's loan application. Second, on the borrower's loan application, the borrower stated that the borrower earned \$6,600 per month as an Office Manager. This income was not reasonable and should have put the underwriter on notice for potential misrepresentations, as a review of the borrower's W-2 for 2006, the year the subject loan closed, revealed monthly income of just \$2,905. Indeed, a recalculation of DTI based on the undisclosed debt and verified income yields a DTI of 137.22%, which far exceeds the maximum DTI permitted by the applicable loan approval. Finally, in the loan application, the borrower

represented that the borrower would occupy the subject property. The Forensic Review, however, uncovered a contradictory hardship letter written by the borrower stating that the subject property was purchased as an investment property with a partner as well as evidence (e.g., voter registration and utility locator) indicating that the borrower's primary residence was not at the subject property.

- Mortgage Loan Number XXXXX9800: On this loan application, the borrower stated that the borrower earned \$2,100 a month as an assistant manager for a financial company. The Forensic Review, however, uncovered evidence that the borrower fraudulently and materially misrepresented the borrower's income and the circumstances of the borrower's employment. Specifically, an audit verbal verification revealed that the borrower no longer was employed by the financial company as of April 2006 – approximately two months before the subject loan closed on June 19, 2006. Moreover, the Forensic Review revealed that a paystub submitted by the borrower with his loan application dated May 28, 2006 was fraudulent. A copy of the borrower's true final paystub was obtained. Finally, the borrower also obtained an undisclosed automobile loan just two months prior to closing of the subject property in April 2006. This undisclosed debt was \$21,479, with a \$508 monthly payment. Indeed, a recalculation of DTI based on the undisclosed debt and verified income yields a DTI of 277.86%, which far exceeds the 50% maximum DTI permitted by the applicable loan approval.
- Mortgage Loan Number XXXXX5475: The borrower failed to disclose all of the mortgage obligations the borrower had undertaken as of the time of origination and thus portrayed a false picture of the borrower's financial obligations. The Forensic Review uncovered that the borrower undertook four additional mortgage obligations associated with two properties totaling \$1,000,000 with a combined monthly payment of \$7,184. Two of the undisclosed mortgages closed on September 29, 2006, less than 30 days after the closing date of the subject property. Thus, the borrower would have started purchase proceedings at the time the subject loan closed. The other two undisclosed mortgages closed on August 30, 2006, shortly before the closing date of the subject property. None of these debt obligations were reflected in the borrower's loan application. Moreover, on the borrower's loan application, the borrower stated that the borrower earned \$8,300 per month as an operations manager of a real estate firm. This income was not reasonable and should have put the underwriter on notice for potential misrepresentations. Indeed, in a Statement of Financial Affairs filed in a Chapter 7 bankruptcy case, the borrower admitted that the borrower's monthly income for 2006, the year that the subject property closed, was just \$2,833 and that the borrower also was not employed by a real estate firm, as represented in the loan application. Moreover, the Forensic Review also turned up evidence of a non-arms' length transaction that was never acknowledged or investigated by the lender, as public records and the final HUD statement indicate that the seller of the subject property is an associate of the borrower.

58. Breaches of the representations and warranties in the PSA and MLPA such as these severely undermine the value of the Mortgage Loans and the Certificates they underlie. Among other things, such breaches conceal significant and material increased risks. A borrower's ability to make the required payments of interest and principal on a mortgage loan depends in significant part upon the borrower's income and employment status. A borrower's debt burden affects the borrower's creditworthiness and ability to make required payments of interest and principal on a mortgage loan. If income is misrepresented as higher than it actually is and debt misrepresented as lower than it actually is, the risk of missed payments and default grows. If intended occupancy is misrepresented, the risk of missed payments and default also grows, as a borrower of an owner-occupied property is less likely to walk away from the loan and the mortgage property is better-maintained (and holds its value better than an otherwise equivalent rental or investment property). Simply put, loans that breach the representations and warranties are riskier than represented.

59. The breaches revealed by the Forensic Review were both severe and voluminous. These breaches had a substantial effect on the risks associated with, and value of, each of the affected Mortgage Loans.

60. Among other things, in many instances borrower income was significantly (and materially) misrepresented to be higher than it actually was, and borrower indebtedness was routinely misrepresented to be lower than it actually was by hundreds of thousands of dollars or more. Underwriting guidelines were brushed aside, with loan originators abandoning minimum verification procedures and therefore leaving open the possibility of even greater risks being concealed. Given the massive number of defective loans, DBSP's own standards for including loans in securitizations were not satisfied for the breaching Mortgage Loans. For each of the

Mortgage Loans individually and for the pool of loans as a whole, the breaches were so severe as to change the risk profile for each defective Mortgage Loan, the Mortgage Loan pool, and the Certificates.

61. Given the number, extent, and nature of the breaches uncovered by the Forensic Review, it is not commercially plausible that DBSP's own due diligence, conducted, on information and belief, before it even made the representations and warranties, did not reveal the same problems with the Mortgage Loans. Here, where at least 95% (2,197 out of 2,310) of the forensically reviewed Group II Mortgage Loans in the pool were riddled with material breaches, due diligence on even a small random sample would have alerted DBSP to fundamental problems with the pool. Accordingly, DBSP delivered to the Trust substantial numbers of Mortgage Loans that failed to conform to the representations and warranties DBSP made to the Trust regarding those loans.

62. The nature and number of the breaches revealed by the Forensic Review were sufficient to defeat the very purpose of the MLPA and PSA. The MLPA and the PSA were executed to deliver to the Trust a fixed and identified pool of loans that individually and as a whole possessed certain characteristics and safeguards. These characteristics and safeguards were reflected in DBSP's representations and warranties. The Forensic Review revealed that at least 2,197 Mortgage Loans did not possess the represented characteristics and safeguards at the time the MLPA and the PSA were executed. Instead, therefore, of receiving a pool of loans having the characteristics and quality represented by DBSP, the Trust received a far riskier and less stable loan pool.

63. The breaches materially and adversely affected the value of each of the affected Mortgage Loans or the interests of the Trust or the Certificateholders in the Mortgage Loan. The

breaches in each instance bore negatively upon, among other things, the affected Mortgage Loan's value and riskiness, the borrower's creditworthiness, the likelihood that the borrower could and would make required payments of principal and interest, and the pass-through payments that the breaching Mortgage Loan would generate for Certificateholders.

IV. The Trustee Provided Timely Notice To DBSP

64. Although DBSP's obligations to cure or repurchase are not conditioned on receipt of notice, the Trustee provided prompt notice of the breaches of the representations and warranties.

65. Section 7(a) of the MLPA states that "[u]pon discovery by the Seller, the Purchaser or any assignee, transferee or designee of the Purchaser . . . of a breach of any of the representations and warranties contained in Section 6 that materially and adversely affects the value of any Mortgage Loan or the interest therein of the Purchaser or the Purchaser's assignee, transferee or designee, the party discovering such breach shall give prompt written notice to the Seller." Section 2.03(a) of the PSA is to a similar effect.

66. Pursuant to MLPA Section 7(a) and PSA Section 2.03(a), the Trustee advised DBSP of the specific breaches identified by the Forensic Review by letters dated October 23, 2012 (the "October 23 Breach Notice"), October 26, 2012 (the "October 26 Breach Notice"), and January 17, 2013 (the "January 17 Breach Notice") (together, the "Breach Notices").

67. In addition, although not required to do so, the Trustee included in its Breach Notices information reflecting, *for each individual Mortgage Loan as to which a breach had been identified*, the loan number, the specific representations or warranties breached, the section number of the MLPA in which such representations or warranties are set forth, and a description of the breaches setting forth the facts and circumstances giving rise to and evidencing the

breaches and the breaches' material and adverse effect on the value of the loans or the interests of the Trust or the Certificateholders in the loans.

68. As to each of the 2,197 loans identified in the Breach Notices, a list of which is attached as Exhibit C, there were breaches of representations and warranties made by DBSP that materially and adversely affected the value of the Mortgage Loan or the interests of the Trust or the Certificateholders in the loan, and for many there were multiple such breaches, with the total number of breaches at approximately 9,227.

69. DBSP was in breach of its obligations to notice breaches and to cure such breaches or repurchase breaching Mortgage Loans within the contractually specified time periods long before it received notice from the Trustee of the breaches uncovered by the Forensic Review. Notwithstanding that, the cure and repurchase periods for the Mortgage Loans subject to the January 17 Breach Notice have not yet expired as of the date of this complaint. It would have been futile for the Trustee to wait to bring a claim relating to the breaching Mortgage Loans identified in the January 17 Breach Notice until the cure or repurchase periods applicable to those breaches and loans have expired. Moreover, DBSP has repudiated its obligation to cure or repurchase *any* breaching Mortgage Loans. In fact, DBSP has taken the position as to its repurchase obligations in another trust involving the same trustee that it is not obligated to repurchase certain categories of loans (even where it previously said it would repurchase those loans). DBSP's stated rationale for this unilateral waiver that it granted itself would apply to many of the breaching Mortgage Loans identified in the January 17 Breach Notice. DBSP's decision to excuse itself from its obligations is without basis in law or the parties' agreements and is flatly inconsistent with established custom and practice in the industry (including DBSP's own established custom and practice). Nonetheless, DBSP has made it clear in other instances

that it will not repurchase the loans.

70. The information provided by the Trustee to DBSP in the Breach Notices was substantially in excess of that required by contract or law. For each breaching Mortgage Loan identified by the Forensic Review, the Trustee provided documentary or other support for the breach(es) found, amounting to thousands of pages of additional material. Finally, the Trustee sent each of the Breach Notices to DBSP in a timely manner, shortly after receiving the results of the Forensic Review.

71. While DBSP was in a position and required to identify breaches, the Trustee was not in a position to identify breaches of representations and warranties without performing a detailed forensic review of the loan files, or any other analysis of the Mortgage Loans, which the Trustee was under no obligation to do. *See, e.g.*, PSA §§ 9.01, 9.02(a)(iii), 9.02(a)(v), 9.02(a)(viii), and 9.03 and MLPA §§ 4(e) and 7(a).

72. The Breach Notices and supporting documents contained more than sufficient information for DBSP to identify and verify the extensive breaches of its representations and warranties in the MLPA and PSA (noting that many of these breaches could certainly be familiar to DBSP). The loan-by-loan level information provided by the Trustee also demonstrated, despite the absence of any legal requirement that the Trustee do so, how each breach as to each breaching Mortgage Loan materially and adversely affected the value of the loan or the interests of the Trust or the Certificateholders in that Mortgage Loan.

V. DBSP Breaches Its Cure, Repurchase, And Reimbursement Obligations

73. Under Section 2.03(a) of the PSA, within 90 days of its discovery of any breach of a representation or warranty, DBSP is contractually required to cure any such breach, or in the absence of cure, to repurchase the affected Mortgage Loan or substitute a loan that conforms to

the representations and warranties.¹¹ It has a similar obligation under the MLPA. *Id.* § 7(a). DBSP is further required to reimburse the Trustee for any (and all) expenses incurred in connection with enforcing DBSP's obligations under the PSA and the MLPA. Yet, despite having discovered many of these breaches even before it executed the relevant agreements, and having received Breach Notices identifying 2,197 breaching Mortgage Loans with some 9,227 breaches, DBSP has failed to cure a single breach or repurchase a single loan.

74. In Section 2.03(a) of the PSA, DBSP covenants that “within ninety (90) days” of its discovery, or receipt of notice, of “a breach . . . of any representation, warranty or covenant . . . that materially and adversely affects the value of such Mortgage Loan or the interest therein of the Certificateholders,” it shall cure such breach “in all material respects” and, if such breach is not so cured (i) prior to the second anniversary of the Closing Date, replace the breaching Mortgage Loan with a Qualified Substitute Mortgage Loan; or (ii) repurchase the affected Mortgage Loan or Mortgage Loans at the Purchase Price.

75. In addition to Section 2.03(a) of the PSA, Section 7(a) of the MLPA affords an independent basis for the relief sought herein. As alleged above, the Trustee is entitled to enforce the MLPA directly as the assignee of the Purchaser's rights under that agreement. The MLPA sets forth substantially similar language to that found in the PSA concerning DBSP's obligations. The MLPA provides in Section 7(a) that DBSP's cure or repurchase obligation is triggered upon DBSP's discovery of or receipt of notice of any “breach of any of the representations and warranties contained in Section 6 that materially and adversely affects the value of any Mortgage Loan or the interest therein of the Purchaser or the Purchaser's assignee,

¹¹ Note that Section 7(a) of the MLPA (executed by DBSP) states that “[a]ny repurchase required by this Section shall be made in a manner consistent with Section 2.03 of the Pooling and Servicing Agreement” and thus cross-references the repurchase obligations set forth in the PSA.

transferee or designee” If DBSP “cannot cure such . . . breach,” then DBSP must “repurchase the affected Mortgage Loan” or “cause the removal of such Mortgage Loan from the Trust Fund and substitute one or more Qualified Substitute Mortgage Loans.” *Id.* § 7(a).

76. Despite these provisions, within 90 days of discovering breaches that materially and adversely affected the value of Mortgage Loans or the interests of the Trust or the Certificateholders in the Mortgage Loans, DBSP did not cure any breaches, repurchase any of the breaching Mortgage Loans, or substitute loans conforming to the representations and warranties. On information and belief, through its due diligence efforts and therefore on or about January 29, 2007 – the date of the MLPA – DBSP discovered the breaches subsequently revealed by the Forensic Review. This discovery triggered its obligation to cure the breaches, repurchase the breaching Mortgage Loans, or substitute non-breaching loans within 90 days of January 29, 2007. Because DBSP failed to do so, it breached the cure and repurchase obligations shortly after the securitization closed.

77. DBSP’s cure or repurchase obligations were again triggered when it was first advised by the Trustee in October 2012 of a Certificateholder’s discovery of breaches of representations and warranties as a result of a Forensic Review. Accordingly, within 90 days of the October 23, 2012 Breach Notice and the October 26, 2012 Breach Notice, respectively, DBSP was again required to either cure the breaches identified in each notice or to repurchase the breaching Mortgage Loans. (The option of replacing breaching Mortgage Loans with Qualified Substitute Mortgage Loans was no longer available as of January 29, 2009, the second anniversary of the Closing Date, which was January 29, 2007.)

78. Despite receiving notice containing detailed descriptions of breaches it already had discovered, DBSP repudiated and abandoned its obligations to cure breaches or repurchase

breaching Mortgage Loans. Among other things, it refused to repurchase a single breaching Mortgage Loan since receiving the October 23, 2012 Breach Notice and the October 26, 2012 Breach Notice in accordance with the relevant agreements. The time for DBSP to actually cure or repurchase the Mortgage Loans identified in the October 23, 2012 Breach Notice and the October 26, 2012 Breach Notice, collectively, has expired. While DBSP's time to cure, substitute, or repurchase the breaching Mortgage Loans identified in the January 17 Breach Notice has not yet expired, DBSP was in breach of its obligations to cure such breaches, substitute non-breaching loans, or repurchase such breaching Mortgage Loans long before it received notice from the Trustee. DBSP has repudiated its repurchase obligations in their entirety in other instances and has refused to repurchase a single breaching Mortgage Loan since it was first notified of breaches in October 2012. Under these circumstances, the Trustee is not required to await expiration of the cure or repurchase periods provided for in the parties' agreements before asserting damages claims as to the additional 530 breaching Mortgage Loans identified by the additional review reflected in the January 17, 2013 Breach Notice.

79. DBSP's refusal to cure or repurchase the breaching Mortgage Loans is without basis, and is itself a breach of the parties' agreements. Neither the PSA nor the MLPA affords DBSP any discretion in connection with its cure and repurchase obligations. If DBSP discovers or is notified that any Mortgage Loan breaches a representation or warranty, then DBSP is required to cure the breach or repurchase the loan.

80. DBSP's obligation to repurchase the breaching loans applies regardless of whether the loans have been liquidated with a loss via foreclosure or "charged off" or otherwise similarly dealt with by the loan servicer. Of course, when DBSP first discovered the breaches, none of the Mortgage Loans had been liquidated, and hence its obligation to cure, substitute or

repurchase was triggered and breached pre-liquidation. Of course, DBSP first discovered the breaches and had an obligation to cure, substitute for, or repurchase breaching Mortgage Loans long before any actions were taken to mitigate the losses caused by DBSP's breaches. DBSP also cannot be heard to complain about the promptness of notice received from the Trustee of its breaches when DBSP had discovered those breaches long before the Trustee did and the Trustee provided notice upon its discovery.

81. Moreover, consistent with DBSP's unequivocal obligations under the PSA and the MLPA, it is established custom and practice in the industry for sponsors to repurchase such loans after liquidation where they have been the subject of subsequent breach notices. DBSP has itself engaged in this custom and practice, including upon information and belief with respect to Mortgage Loans in this Trust.¹² This established custom and practice is well known to industry participants, and is reflected in data available to industry participants in, among other documents, filings with the Securities and Exchange Commission. In such cases, the payments in satisfaction of repurchase obligations are sometimes referred to as "make whole" payments. The parties' agreements, and DBSP's contractual repurchase obligation, should be construed in the light of this custom and practice.

82. Of course, the fact that DBSP kept silent with regard to breaches it had itself discovered and made, that it was necessary for Certificateholders to "re-underwrite" and analyze a substantial portion of the Mortgage Loan portfolio sold to the Trust by DBSP, and the fact that the Forensic Review revealed a minimum of 2,197 breaching Mortgage Loans, is evidence that the underlying framework and purpose of the PSA and the MLPA had been frustrated before the

¹² DBSP only turned its back on its own custom and practice when the true scope of its liability came to light and it has since repudiated its obligations.

Trustee even sent its October 23, 2012 Breach Notice. Pursuant to these agreements and consistent with custom and practice in the industry, the cure or repurchase remedy was meant to be a fast commercial mechanism for correcting infrequent, inadvertent deviations from the representations and warranties. DBSP has forced the Trust (and the Certificateholders) to go through a lengthy, expensive, and ultimately litigious process merely in order to obtain the benefit of their original bargain.

83. In summarily failing to cure any of the breaches identified in any of the Breach Notices, or to repurchase any of the 2,197 breaching Mortgage Loans, DBSP has breached the cure or repurchase obligation under the PSA and the MLPA for each of the breaching Mortgage Loans.

84. In addition to its cure, substitution, and repurchase obligations, DBSP further agreed to reimburse the Trustee for the expenses of enforcing DBSP's obligations under the MLPA and the PSA. *See, e.g.*, MLPA § 4(d). The Trustee has incurred substantial expense, and will incur substantial further expense, in enforcing its rights and remedies for DBSP's breaches, and DBSP is required to reimburse the Trustee for these expenses.

85. The Trust seeks a declaration that DBSP is required to reimburse the Trustee for all costs and expenses related to this action.

VI. Enforceability by the Trustee

86. The MLPA and the PSA set forth provisions that are intended to, and do, render the representations, warranties and covenants made by DBSP therein enforceable by the Trustee on behalf of the Trust.

87. The MLPA provides in a "Preliminary Statement" that the Seller, Defendant DBSP, "intends to sell the Mortgage Loans" as well as certain other assets, "to the Purchaser,"

and that the “Purchaser intends to deposit the Mortgage Loans into a mortgage pool comprising the Trust Fund” (that is, the Trust as defined herein).

88. The MLPA further provides, in Section 3(c), that “[p]ursuant to the Pooling and Servicing Agreement, the Purchaser will assign all of its right, title and interest in and to the Mortgage Loans . . . together with its rights under this Agreement, to the Trustee for the benefit of the Certificateholders.” The Pooling and Servicing Agreement referred to in this provision (and the one alleged immediately below) is the PSA as alleged and defined herein.

89. The MLPA further provides, in Section 4(d), that “[t]he Purchaser has the right to assign its interest under this Agreement, in whole or in part, to the Trustee, as may be required to effect the purposes of the Pooling and Servicing Agreement, without the consent of the Seller”

90. The MLPA further provides, in Section 7(a), that the representations and warranties made in the MLPA by DBSP as Seller of the Mortgage Loans “shall inure to the benefit of any assignee, transferee or designee of the Purchaser, including the Trustee for the benefit of the Certificateholders.”

91. The PSA provides, in Section 2.01, headed “Conveyance of the Mortgage Loans,” in pertinent part as follows:

The Depositor, concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey to the Trustee, on behalf of the Trust, without recourse, for the benefit of the Certificateholders, all the right, title and interest of the Depositor, including any security interest therein for the benefit of the Depositor, in and to the Mortgage Loans . . . the rights of the Depositor under the Mortgage Loan Purchase Agreement

92. The Mortgage Loan Purchase Agreement referred to in the PSA is the MLPA as alleged and herein defined. Thus, the Trustee is contractually entitled to enforce both the MLPA, as to which it is an assignee, and the PSA, as to which it is a signatory, including without

limitation, DBSP's contractual repurchase obligations arising from breaches of the representations, warranties, and covenants set forth herein.

93. The Trustee is also not limited in its enforcement to any one remedy under the MLPA, the PSA, or applicable law. Section 12 of the MLPA provides that "[a]ll rights and remedies of the Purchaser [and therefore the Trustee as its permitted assignee] under this Agreement are distinct from, and cumulative with, any other rights or remedies under this Agreement or afforded by law or equity and all such rights and remedies may be exercised concurrently, independently or successively." In addition, DBSP's breaches of the representations and warranties set forth in Section 6 of the MLPA, among others, entitle the Trustee to seek remedies outside of those prescribed by Section 2.03(a) of the PSA and Section 7(a) of the MLPA. Thus, the Trustee may select its remedy from those available pursuant to the parties' agreements or afforded by law or equity.

CAUSES OF ACTION

FIRST CAUSE OF ACTION Breach of Contract/Damages

94. Breach of Contract/Damages Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 93, as though set forth fully herein.

95. The MLPA and the PSA are valid and enforceable agreements. The MLPA and PSA are enforceable by the Trustee. The Trustee has performed all of its obligations in connection with the matters described herein pursuant to the MLPA and PSA.

96. The MLPA and PSA set forth representations and warranties concerning the Mortgage Loans, requiring DBSP to cure any noticed breaches of such representations and warranties or, failing such cure, to substitute non-breaching loans or to repurchase breaching

Mortgage Loans if the breaches materially and adversely affect the value of the breaching Mortgage Loans or the interests of the Trust or the Certificateholders in the loans.

97. The MLPA and PSA further require DBSP itself to provide notice of any breaches it discovers, and to cure any such breaches or, failing cure, to repurchase breaching Mortgage Loans if the breaches materially and adversely affect the loans' value or the interests of the Trust or the Certificateholders in the loans.

98. In breach of its contractual representations and warranties, DBSP conveyed to the Trust at least 2,197 breaching Mortgage Loans that were not originated in accordance with applicable underwriting standards, that involved fraud on the part of any person in the origination process (including, the originator), that were in material default or breach under the terms of the mortgage or mortgage note, or that were otherwise not in accordance with DBSP's representations and warranties concerning the loans.

99. The Forensic Review revealed breaches of representations and warranties as to at least 2,197 Mortgage Loans. The Forensic Review uncovered multiple breaches as to many of the breaching Mortgage Loans. With respect to each noticed Mortgage Loan, one or more of the breaches materially and adversely affect the value of the Mortgage Loan or the interests of the Trust or the Certificateholders in the loan.

100. DBSP was again in breach of its obligations when it received notices of the breaches from the Trustee, as alleged herein, and failed to cure such breaches or to repurchase the breaching Mortgage Loans.

101. Upon information and belief, DBSP also discovered these breaches as part of its due diligence, before the Forensic Review was even considered. Having on its own discovered breaches, DBSP was required, before ever receiving breach notices from any other party, to cure

the breaches within the contractually required time periods or, failing such cure, to substitute non-breaching loans, or to repurchase the breaching Mortgage Loans. In breach of its contractual obligations, DBSP failed to do any of these things.

102. DBSP has failed and refused to perform, and is in breach and default of, its contractual obligations. DBSP is in breach of its contractual representations and warranties. DBSP is in breach of its cure, substitute, and repurchase obligations. Each of DBSP's breaches entitles the Trust to damages.

103. DBSP was provided timely notice of breaches by the Trustee by the October 23, 2012, October 26, 2012, and January 17, 2013 Breach Notices. DBSP failed to cure such breaches or repurchase any of the breaching Mortgage Loans pursuant to such notices within the contractually specified time periods.

104. The contractually-provided cure and repurchase periods pursuant to the notice provided to DBSP by the Trustee have expired as to the breaching Mortgage Loans identified in the October 23, 2012 Breach Notice and the October 26, 2012 Breach Notice, collectively (the cure, substitution, and repurchase periods initiated by DBSP's discovery of these same breaches expired much earlier). DBSP has failed and refused to cure or repurchase any of those breaching Mortgage Loans – whether pursuant to its own discovery of such breaches or the Breach Notices provided by the Trustee. DBSP's time to cure or repurchase the additional breaching Mortgage Loans identified in the January 17, 2013 Breach Notice has not yet expired. Given DBSP's abandonment and repudiation of its repurchase obligations, its failure to cure or repurchase the additional 530 breaching Mortgage Loans identified in the January 17, 2013 Breach Notice is inevitable. DBSP has abandoned and repudiated its repurchase obligations as to all breaching Mortgage Loans that it discovered or of which it received notice.

105. DBSP has failed and refused to perform, and is in breach and default of, its contractual obligations. DBSP is in breach of its contractual representations and warranties, and its cure and repurchase obligations, as set forth in Section 7(a) of the MLPA and Section 2.03 of the PSA. Each of DBSP's breaches entitles the Trust to damages.

106. Pursuant to the terms of the parties' agreements, the Trustee is not limited to seeking only those remedies prescribed by Section 2.03 of the PSA or Section 7(a) of the MLPA.

107. The Trustee on behalf of the Trust is entitled to damages, in an amount to be determined at trial, for the losses caused by DBSP's breaches of contract.

SECOND CAUSE OF ACTION

Fundamental Breach/Rescissory Damages

108. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 107, as though set forth fully herein.

109. The MLPA and the PSA are valid and enforceable agreements. The MLPA and PSA are enforceable by the Trustee. The Trustee has performed all of its obligations in connection with the matters described herein pursuant to the MLPA and PSA.

110. DBSP caused the Trust to be created for the purpose of enabling DBSP to transfer to the Trust mortgage loans that DBSP wished to securitize and that would serve as collateral and as the source of payment on the securities that DBSP intended the Trust to issue to investors. Securitization trusts are "pass-through" vehicles in which the principal and interest payments literally get passed through to Certificateholders. The principal safeguards for the Trust to ensure that it possesses mortgage loans that have the risk characteristics it is prepared to be exposed to are the sponsor's representations and warranties concerning those mortgage loans and the remedies available to the Trust in the case of a breach of the representations and warranties. Those representations and warranties, and the corresponding cure/repurchase remedy, are

intended to ensure that the Trust is not exposed to the risk that even a single mortgage loan does not possess its represented characteristics and risk profile.

111. It simply is not within the parties' reasonable expectations – it is not their contractual bargain – when creating a securitization trust that the securitization sponsor will transfer to the trust a large number of loans that do not possess the represented characteristics. The parties' agreements do not contemplate the Sponsor transferring some 2,197 defective mortgage loans to the Trust. Instead, the parties' agreements evince an understanding that breaching loans will be few in number – the exception rather than the rule – and the agreements provide for how such *individual breaching loans* will be dealt with. Thus, the agreements here provide that *any* breach of a sponsor representation or warranty as to *any* Mortgage Loan requires the Sponsor, DBSP, to cure the breach or to repurchase the loan. If the breach is discovered within the first two years of the Trust's existence, then (and only then, for that limited period of time) can the Sponsor substitute in a new loan for the defective loan.

112. The PSA and the MLPA further indicate the Trust's expectation that such breaches were expected to be rare, given that such agreements provide that DBSP must itself report a breaching loan, thereby triggering its own cure and repurchase obligations. This obligation, among other things, reflects the fact that DBSP itself caused the Trust to be created so that DBSP could securitize the loans and cause securities to be sold to investors; and that DBSP assumed all of the risk that any of the loans would not possess their represented characteristics. Indeed, it also reflects that the Trust reasonably expected DBSP to stand behind its promises, even when doing so would expose DBSP to liability.

113. What is clear is that the bargain the Trust (and therefore Certificateholders) thought they were making is not the one that they ended up with. The situation here is so far

afield from the bargain the parties struck as to defeat it entirely. Here, DBSP conveyed to the Trust at least 2,197 breaching loans. That represents a massive transfer to the Trust of loans that on day one of the Trust failed to have their promised characteristics and had riskier profiles than represented. DBSP never provided notice that a single one of these loans was in breach and DBSP has never cured or repurchased a single one of these loans. Instead, DBSP has simply ignored and repudiated its contractual repurchase obligations, and in other trusts has asserted even as to loans that it previously stated it would buy back specious defenses that are wholly at odds with the parties' agreements and with custom and practice in the industry.

114. The net result is that the bargain that the Trust and the Certificateholders are left with is unrecognizable from the one they made. DBSP has destroyed, repudiated and defeated that bargain. The parties intended, and the parties' agreements provide, that DBSP would convey to the Trust approximately 4,591 identified Mortgage Loans that were originated in accordance with sound underwriting practices, that were associated with creditworthy borrowers who had not lied about their circumstances, and that otherwise conformed to the law, among other things. DBSP made no fewer than 75 different representations and warranties to this effect.

115. Where *any one* of these representations and warranties was breached as to *any one* of these loans, DBSP promised to cure the breach or repurchase the loan. The obvious and reasonable import of those representations and warranties was to throw a blanket over all of the loans – the entire Trust corpus – for the purpose of reassuring all concerned that the loans were “covered” by DBSP; in other words, that the loans were what DBSP represented them to be, that they possessed the risk characteristics that it represented them to have, that any exceptions would be few and would be dealt with promptly by DBSP, that indeed so few loans would be defective

that DBSP itself would bring them to light if it “discovered” them, and that DBSP, not the Trust (and not Certificateholders), would bear the risks associated with breaching loans.

116. Instead of the situation described above, the bargain that DBSP has left the Trust with is the following: DBSP conveyed to the Trust a pool of Mortgage Loans filled with defects. On information and belief, DBSP discovered many if not all of those defects but failed to cure or repurchase even the Mortgage Loans it discovered on day one were in breach. In failing to cure or repurchase any of the breaching Mortgage Loans, DBSP has fundamentally defeated and frustrated the parties’ agreements and repudiated its contractual obligations, keeping to itself information it had previously discovered concerning the breaching Mortgage Loans and shifting onto other parties a contractual burden it undertook.

117. The Forensic Review, initiated and performed at a private Certificateholder’s initial expense, has revealed that the Trust corpus is replete with breaching loans. One or more breaches with respect to each noticed loan materially and adversely affects the value of the Mortgage Loans or the interests of the Trust or the Certificateholders in the loan. The breaches go to core matters, such as how much money borrowers earn, where they are employed, where they intended to live, and how much indebtedness they have. The breaches reveal a fundamental breakdown of applicable loan underwriting standards. Provided with notice of these breaches, DBSP has simply acted in bad faith. It has refused to acknowledge the breaches. It has repudiated its own representations and warranties, and its obligation to repurchase the loans.

118. The fact that DBSP has responded in this manner to breach notices concerning breaches of which, at least with respect to some portion, it had already discovered, further evidences that the parties’ agreement has been fundamentally defeated and that DBSP has repudiated its contractual obligations. Upon information and belief, had DBSP not transferred

such a large number of breaching loans to this Trust (and others) in the first place, DBSP would not be stonewalling the Trust's efforts to enforce its remedies on behalf of Certificateholders. But the liability that DBSP created for itself is so large that DBSP is simply sidestepping the parties' bargain, as it has been doing (unbeknownst to the Trustee) from day one. Thus, instead of being able to deal expeditiously and extra-judicially with a handful of breaching loans pursuant to the notice, cure, substitution, and repurchase provisions in the parties' agreements, the parties are embroiled in litigation over a massive number of breaching loans. This is not what the parties agreed to. Their agreement has been destroyed and repudiated by DBSP.

119. DBSP's actions in conveying to the Trust a massive number of Mortgage Loans that do not conform to DBSP's own representations and warranties constitute a fundamental breach that defeats the purpose of the parties' agreements. DBSP's failure to provide notice of a single breach of its representations and warranties, when upon information and belief, it must have discovered there were hundreds, if not thousands, further constitutes a fundamental breach of the agreements. DBSP's failure to abide by the commercial procedure set forth in the parties' agreements – notice, and substitution, cure, or repurchase – further defeats the purpose of those agreements.

120. DBSP's breaches of the agreements were willful. On information and belief, DBSP intentionally or with reckless disregard made a series of representations and warranties that have been proven to be untrue in approximately 9,227 instances as to at least 2,197 loans. Thereafter, DBSP willfully failed to meet its cure/substitution/repurchase obligations.

121. DBSP's breaches are so fundamental that they give rise to a right to rescissory damages. The Trust is entitled to, and the Trustee seeks an award of, rescissory damages in an amount to be determined at trial.

122. The rescissory damages sought by the Trust include all damages arising from the breaches of contract alleged herein.

THIRD CAUSE OF ACTION
Breach of Contract/Specific Performance

123. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 122, above as though fully set forth herein.

124. In the alternative to its claims for rescissory or compensatory damages, the Trustee seeks an order of specific performance requiring DBSP to repurchase the breaching Mortgage Loans.

125. DBSP was on notice of the breaching Mortgage Loans based on its own discovery of the breaches. DBSP has further been provided timely notice of the breaching Mortgage Loans. The breaches DBSP discovered and of which DBSP has received notice materially and adversely affect the value of the Mortgage Loans or the interests of the Trust or the Certificateholders of the loans. DBSP has failed to cure the noticed breaches within the contractually specified time periods and indicated that, in many cases, it will not cure or repurchase the noticed breaches.

126. The MLPA and PSA expressly provide that, unless it has effected timely cure of the noticed breaches, DBSP is required to satisfy its repurchase obligation.

127. DBSP has failed to satisfy its cure, substitution, or repurchase obligation with respect to any of the breaching Mortgage Loans. The contractually-provided cure and repurchase periods have expired as to the 1,667 breaching Mortgage Loans identified in the October 23, 2012 and October 26, 2012, notices. DBSP has failed and refused to repurchase any of those breaching Mortgage Loans. DBSP's time to cure or repurchase the 530 additional breaching Mortgage Loans identified in the January 17, 2013 Breach Notice has not yet expired.

Given DBSP's abandonment and repudiation of its repurchase obligations, and its failure to cure or repurchase those additional breaching Mortgage Loans is inevitable.

128. DBSP has failed and refused to perform, and is in breach and default of, its contractual obligations. DBSP is in breach of its contractual representations and warranties. Separately, DBSP is in breach of its cure and repurchase obligations. Each of DBSP's breaches entitles the Trust to damages.

129. In the alternative to the Trustee's claims that it is entitled to damages for DBSP's breaches, and in the absence of any other remedy at law, the Trustee is entitled to an order of specific performance requiring DBSP to repurchase each and every one of the breaching Mortgage Loans. The breaching Mortgage Loans are identified on Exhibit C hereto.

FOURTH CAUSE OF ACTION **Declaratory Judgment for Reimbursement of Expenses**

130. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 129 above as though set forth fully herein.

131. A real and justiciable controversy exists as to the rights and legal relations of the parties under the PSA and the MLPA.

132. The Trustee provided notices to DBSP to cure or repurchase the breaching Mortgage Loans.

133. The MLPA and the PSA provide that DBSP must reimburse the Trustee for any expenses reasonably incurred in connection with enforcing the remedies for breaches of DBSP's representations and warranties. DBSP has repudiated all of its contractual obligations, including its obligation to reimburse the Trustee for its costs and expenses in connection with enforcing the repurchase remedy pursuant to the parties' agreements.

134. The expenses for which DBSP is liable include attorneys' fees, as well as expenses incurred by the holders of the Certificates.

135. The Trust has incurred and will continue to incur expenses in enforcing DBSP's obligations under the MLPA and PSA.

136. The Trust has been damaged and will continue to be damaged in an amount to be determined at trial.

137. The Trustee has performed all conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of the MLPA and the PSA. Because this is a justiciable controversy under CPLR § 3001, the Trust is entitled to a declaration that DBSP is required to reimburse it for its expenses in enforcing its remedies, including the costs of this action, attorney's fees, and other such expenses.

PRAYER FOR RELIEF

WHEREFORE, judgment should be entered in favor of Plaintiff and against the Defendant as follows:

(a) On the first cause of action, for an award of compensatory damages against DBSP in an amount to be proven at trial;

(b) On the second cause of action, for an award of rescissory damages against DBSP in an amount to be proven at trial;

(c) On the third cause of action, for specific performance of DBSP's repurchase obligations;

(d) On the fourth cause of action, for a declaration that DBSP must reimburse the Trustee for its expenses in enforcing DBSP's obligations under the PSA and the MLPA, including attorneys' fees;

- (e) For prejudgment interest at the maximum legal rate; and
- (f) For any such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

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

DATED: New York, New York
January 28, 2013

Respectfully submitted,

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Appendix: Diagram of the ACE 2007-WM1 Securitization

