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

MERRILL LYNCH MORTGAGE INVESTORS TRUST, SERIES 2006-RM4, MERRILL LYNCH MORTGAGE INVESTORS TRUST, SERIES 2006-RM5, **Plaintiffs,** **-against-** **MERRILL LYNCH MORTGAGE LENDING, INC., MERRILL LYNCH MORTGAGE INVESTORS, INC., BANK OF AMERICA, NATIONAL ASSOCIATION,** **Defendants.**	**Index No. ___________** **COMPLAINT**

Plaintiffs Merrill Lynch Mortgage Investors Trust, Series 2006-RM4 ("RM4 Trust") and Merrill Lynch Mortgage Investors Trust, Series 2006-RM5 ("RM5 Trust", and collectively, the "Trusts"), by U.S. Bank National Association ("U.S. Bank"), not in its individual capacity but solely as current trustee with respect to the Trusts (the "Trustee"), by its attorneys, Quinn Emanuel Urquhart & Sullivan LLP, for their Complaint against Merrill Lynch Mortgage Lending, Inc. ("Merrill", the "Sponsor", or "Merrill Sponsor"), Merrill Lynch Mortgage Investors, Inc. ("Merrill Depositor"), and Bank of America, National Association ("Bank of America") (all collectively, "Defendants") allege as follows:

NATURE OF ACTION

1. In this action, Plaintiffs are two securitization trusts that hold and administer mortgage loans on behalf of investors who own securities collateralized by such loans. Plaintiffs seek to enforce their contractual rights against the parties that orchestrated the securitizations and

created the two Trusts, sold defective loans into the Trusts, and have refused to repurchase such loans in violation of the contracts governing the securitizations.

2. In 2006, as a part of its effort to increase its share of the then-highly profitable residential mortgage-backed securities ("RMBS") market, Merrill bought over 6,000 mortgage loans ("Mortgage Loans") with original principal balance of over $1.1 billion dollars from a third-party loan originator, ResMAE Mortgage Corporation ("ResMAE"). Through the process of securitization, Merrill turned these mortgages into tradable securities in the form of certificates ("Certificates"). Certificates were issued by the RM4 Trust and the RM5 Trust on September 27, 2006 and October 27, 2006 for the RM4 Trust and RM5 Trust, respectively, and sold to investors, which resulted in over a billion dollars of proceeds to Merrill Depositor. Each Certificate entitles its holder to cash flows from the loan payments on the corresponding mortgages.

3. Merrill accomplished each securitization primarily through three contracts:

- The Master Mortgage Loan Purchase and Interim Servicing Agreement (the "Purchase Agreement") (a copy of which is attached hereto as Exhibit A), pursuant to which Merrill purchased Mortgage Loans from ResMAE;
- The Mortgage Loan Sale and Assignment Agreement (each, a "Sale Agreement") (copies of which for each Trust are attached hereto as Exhibit B), pursuant to which Merrill Sponsor transferred the Mortgage Loans to an affiliated entity Merrill Lynch Mortgage Investors, Inc. that acted as a depositor; and
- The Pooling and Servicing Agreement (each, a "PSA") (copies of which for each Trust are attached hereto as Exhibit C), pursuant to which Merrill Depositor transferred the Mortgage Loans to the Plaintiff Trusts.

(collectively, the "Trust Agreements").

4. To facilitate the sale of the Certificates to investors, who had no independent means of verifying the characteristics of the underlying mortgage loans, Merrill and ResMAE made extensive representations and warranties in the securitization documents about the quality

and characteristics of the Mortgage Loans underlying the corresponding Certificates. The accuracy of the representations and warranties were a key component to closing a securitization transaction because, among other reasons—unlike Merrill and ResMAE—investors were not given access to the related loan origination files and could not have independently confirmed the loans' credit characteristics. Accordingly, the veracity of these representations and warranties were the drivers of the loans' risk profile.

5. In the Purchase Agreement, pursuant to which Merrill purchased the loans from ResMAE, the loan originator, ResMAE represented, among other things, that the loans complied with underwriting criteria, were issued to borrowers with sufficient income to repay them, and were backed by properties valuable enough to allow investors to recoup the value of the loan through foreclosure. If any of the loans were found to breach representations and warranties, ResMAE committed to buy back the loan. Merrill's rights against ResMAE were then assigned to the Trusts.

6. In the securitization process, Merrill also made its own representations and warranties in the Sale Agreements concerning loans' quality, restating many of ResMAE's promises verbatim for the benefit of the Trusts (listing specific representations and providing that such representations "are hereby restated by the Sponsor as of the Closing Date"). In addition, Merrill contractually guarantied ResMAE's performance under the Purchase Agreement, ensuring that the risk of non-conformance with representations and warranties was not borne by the Trusts. The right to enforce Merrill's representations and warranties was assigned to the Trusts.

7. Merrill's promises were designed to give investors comfort that not just ResMAE but also Merrill ultimately stood behind the quality of the loans. If the loans did not hold up to

their stated standards, not only was ResMAE liable for repurchases, but so was the sponsor of the deal, Merrill. Merrill's "backstop" guaranty allowed Merrill to market the deal to investors on favorable terms, as certificateholders received two layers of protection for the mortgage quality, and were assured that the Sponsor, Merrill, had done its diligence and stood behind the loans. This was also important because, at the time, ResMAE was financially a much less secure institution than Merrill, as its bankruptcy only ***three months*** after the securitizations bore out.

8. By the time of the bankruptcy, filed in February 2007, a number of the loans in the Trusts suffered from early payment defaults ("EPDs"), where the borrowers missed either the first or second monthly payment under their mortgages. These EPDs violated ResMAE's and Merrill's representations and warranties. Accordingly, the Trusts, through LaSalle Bank, National Association, acting in its capacity as the original trustee with respect to the Trusts ("LaSalle"), filed claims against ResMAE in bankruptcy, demanding that ResMAE repurchase the EPD loans or otherwise compensate the Trusts.

9. In July 2008, LaSalle, then a subsidiary of Bank of America, consented to a settlement of the bankruptcy claims against ResMAE on behalf of five Merrill-sponsored trusts, including the Plaintiff Trusts (the "Bankruptcy Settlement"). Merrill, which had filed its own claims against ResMAE on EPD loans it held on its balance sheet, likewise consented to the Bankruptcy Settlement. The settlement provided that Merrill and the Merrill-sponsored trusts would collectively accept a lump sum from the bankruptcy estate as consideration for releasing their individual bankruptcy claims against ResMAE. They would separately allocate that sum among themselves. LaSalle sent a notice to investors informing them of the settlement with ResMAE. Because ResMAE had very limited funds to satisfy a large number of bankruptcy

claims, the Trusts ultimately received only a small part of the money owed for those EPD loan breaches.

10. To allocate the proceeds, Merrill and the trusts entered into a second settlement agreement later that year (the "Allocation Agreement"). By the time of the Allocation Agreement, Bank of America had taken over as the trustee for the Plaintiff Trusts (in this capacity, "Bank of America as Successor Trustee"), and its parent, Bank of America Corporation, was in the process of acquiring Merrill. The Allocation Agreement is dated "as of December 31, 2008," the day before Bank of America's acquisition of Merrill closed, but the date stamped on the faxed signature page for the Allocation Agreement is January 22, 2009, which suggests that the settlement was not signed until three weeks after Bank of America acquired Merrill and less than a month before Bank of America as Successor Trustee resigned as trustee due to the obvious conflict of interest. Bank of America as Successor Trustee did not send a notice to investors, informing them of the Allocation Agreement or its terms.

11. In late 2011 and early 2012, forensic review of Mortgage Loan files ("Origination and Servicing Files") from both Trusts was undertaken and payment analysis of certain Mortgage Loans was conducted. These reviews found that at least 1,221 loans for the RM4 Trust and 1,411 loans for the RM5 Trust suffered from breaches of representations and warranties and did not have the represented characteristics. The breaching loans were subject to the cure and repurchase provisions in the transaction documents due to defects relating to, among other things:

a) Misstatement of Income and Employment. Loan documents for many loans misstated the borrowers' incomes, misstated the borrowers' employment, or listed incomes that were clearly not reasonable for the borrowers' stated occupations.

b) Misstatement of Debts. Loan documents for many loans misstated the borrowers' existing debt obligations, despite clear indications that the borrowers had more debts than were listed in the borrowers' applications.

c) Misstatement of Debt-to-Income Ratios. A borrower's "debt-to-income" ratio (or "DTI" ratio) compares the borrower's monthly debt obligations to the borrower's monthly income. The higher the DTI ratio, the greater the likelihood of a default. For many Mortgage Loans, the actual DTI ratios were far higher than represented.

d) Misstatement of Property Value. Property value is an essential loan characteristic that allows investors to make sure that they could recoup the loan amount in full through foreclosure if the borrower defaults. Merrill misrepresented the true values of the underlying properties throughout the Trusts' mortgage loan pools.

e) Misstatement of Loan-to-Value Ratios. A property's "loan-to-value" ratio or "combined loan-to-value" ratio ("LTV" and "CLTV" ratios) expresses the amount of the Mortgage Loan as a percentage of the property's total value. The higher the LTV or CLTV ratio, the greater the likelihood of default because the borrower has less equity invested in the property. For many Mortgage Loans, the actual LTV and CLTV ratios were far higher than the ratios represented by Merrill.

f) Misstatement of Owner-Occupancy Status. Borrowers who live in mortgaged properties are much less likely to default than borrowers who do not, which is reflected in the industry practice of assessing higher lending rates to non-owner occupied properties. If a property is not owner-occupied, then the risk of default increases. Loan documents for many loans listed properties as being "owner-occupied," despite clear indications that this was not the case.

12. These defects constitute breaches of multiple representations and warranties under the Purchase Agreement and Sale Agreements that were independently made or guarantied by Merrill. (The breaches for the Mortgage Loans are catalogued in the reports attached hereto as Exhibit D and Exhibit E.) These defects alone and in combination show that the loans in the two Trusts did not have the credit quality they were represented to have, and that there is a higher likelihood that the borrowers would fall behind on their loan payments or would default on their loans altogether, as many in fact did. The increased risk of borrowers' delinquencies and defaults materially and adversely affects the value of the Mortgage Loans and the interests of Certificateholders therein.

13. Having been liquidated in bankruptcy, ResMAE can no longer fulfill any of its contractual repurchase obligations and thus Merrill must repurchase loans under the terms of the Sale Agreements.

14. Promptly upon becoming aware of the defects, beginning in March 2012 and continuing as the loan file investigation bore results, the successor Trustee U.S. Bank started to inform Merrill of the results of the review of the Origination and Servicing Files (*See* Ex. F; Ex. G[1]). According to the terms of the Trust Agreements, when Merrill learns that a loan in the pool is defective, it must buy back the loan from the Trust within 75 days. But despite being on notice of particular defects in at least 2,632 Mortgage Loans in the two Trusts, Merrill refused to honor its repurchase obligations to the Trusts.

15. Instead, Merrill claimed that all of its liability to the Trusts had been released in connection with the ResMAE bankruptcy settlement. Merrill informed the Trustee that the Allocation Agreement, which allocated proceeds of the Bankruptcy Settlement among the Trusts and Merrill, somehow released Merrill of all its liability to the Trusts. This would be an illogical result, given that claims had not been asserted against Merrill in connection with the bankruptcy proceeding. The papers in the bankruptcy court described the settlement as concerning only claims made against ResMAE and the notice that LaSalle sent to certificateholders disclosing the settlement and soliciting objections only discussed the release of claims against ResMAE.

16. Merrill's position cannot hold. It is clear from the language and circumstances that the release of claims against Merrill in the Allocation Agreement only addressed allocation of the Bankruptcy Settlement proceeds and did not release Merrill from any independent liability it had to the Trusts. Indeed, Bank of America as Successor Trustee under the terms of the Trust

[1] The repurchase requests attached to this complaint as Exhibits F and G do not include the accompanying breach reports because the reports identify private information about specific borrowers, such as addresses and employment status. The complete reports, as well as supporting loan documentation, have been provided to Merrill and could be offered to the Court after the parties and the Court have had the opportunity to discuss a protective order. The breach reports are aggregated and summarized in Exhibits D and E.

documents, had no authority to release Merrill (its affiliate) from any such claims, and any such release would be void.

17. Separately, the Trusts also assert claims against Bank of America, as successor-in-interest to the initial servicer, Wilshire Credit Corporation ("Wilshire"), and as successor servicer itself. Those companies have modified 247 delinquent Mortgage Loans in the RM4 Trust and 296 delinquent Mortgage Loans in the RM5 Trust. During the modification process, Wilshire and Bank of America as servicer would have examined the loan files and in the process would likely have discovered breaches of representations and warranties in the loan pools. However, despite their likely discovery of breaches, neither Wilshire nor Bank of America, as servicer has notified the Trustee of any such breaches. Indeed, documentation in the loan servicing files uncovered during the loan file investigation confirms that Wilshire and Bank of America knew of information indicating breaches because that information was contained in the servicing files they created. In one instance, for example, the borrower claimed to earn $6,700 per month on the loan application, but subsequent bankruptcy filings included in the servicing file reflected an income of only $2,122 per month. To the extent the servicer, *i.e.*, Wilshire or its successor, Bank of America, became aware of breaches of representations and warranties in the process of servicing the loans, their failure to notify constitutes a breach of their contractual obligations to do so under Section 2.03(c) of the PSAs.

18. In sum, Merrill has breached the Sale Agreements and the PSAs. These breaches materially and adversely affect the value of the Mortgage Loans and the interests of the Certificateholders therein because, among other things, the risks of delinquency and default associated with the Mortgage Loans were higher than what the Trusts bargained for, and, as a result, the value of the Mortgage Loans and Certificates is diminished. Wilshire's and Bank of

America's likely conduct as servicers likewise breaches their obligations under the PSAs as Servicer.

19. Finally, and alternatively, if the Allocation Agreement is interpreted to release Merrill from liability to the Trusts as Merrill asserts, very troubling questions would be raised as to how Bank of America as Successor Trustee could have released its own affiliate, given its role as a trustee with respect to the Trusts, without meaningful consideration, disclosure to Certificateholders, or court approval. In such event, the release of Merrill from liability to the Trusts would be void and unenforceable as a product of self-dealing and beyond Bank of America as Successor Trustee's authority as a trustee with respect to the Trusts. In addition, Bank of America as Successor Trustee would also be liable to the Trusts for any losses resulting from any such release.

20. Therefore, the Trusts, acting through the Trustee, now bring this action for breach of contract, specific performance, and declaratory judgment to enforce the obligations of Merrill and Bank of America as Successor Trustee under the PSAs and the Sale Agreements, and in the alternative, for damages suffered as a result of Bank of America's release of the Trusts' claims against Merrill.

PARTIES

21. Plaintiff Merrill Lynch Mortgage Investors Trust, Series 2006-RM4 is a New York common law trust established pursuant to the respective PSA. U.S. Bank National Association is a national banking association, organized and existing under the laws of the United States with its main office in Cincinnati, Ohio. U.S. Bank presently serves as Trustee for the RM4 Trust pursuant to the respective PSA, and has served as Trustee since March 31, 2009.

22. Plaintiff Merrill Lynch Mortgage Investors Trust, Series 2006-RM5 is a New York common law trust established pursuant to the respective PSA. U.S. Bank presently serves

as Trustee for the RM5 Trust pursuant to the respective PSA, and has served as Trustee since March 31, 2009.

23. Defendant Merrill Lynch Mortgage Lending, Inc. is a Delaware corporation with its principal place of business in New York, New York and is a subsidiary of Bank of America Corporation. It is engaged in the business of, among other things, acquiring residential mortgage loans and selling those loans through securitization programs. It acted as the Sponsor for each of the Trusts.

24. Defendant Merrill Lynch Mortgage Investors, Inc. is a Delaware corporation with its principal place of business in New York, New York. It is a subsidiary of Bank of America Corporation. Merrill Lynch Mortgage Investors, Inc. was the depositor for each of the Trusts.

25. Defendant Bank of America, National Association is a nationally-chartered United States bank with substantial business operations and offices in New York, New York. It is a wholly-owned subsidiary of Bank of America Corporation. It acted as the trustee for each of the Trusts from October 2008 until April 2009. In addition, it is a successor by merger to LaSalle, which was the initial trustee for each of the Trusts. Bank of America Corporation acquired LaSalle in October 2007 and remained as trustee until the end of March 2009. Bank of America is also the current Servicer for each of the Trusts and a successor-in-interest to the initial servicer, Wilshire.

JURISDICTION AND VENUE

26. This Court has jurisdiction over this proceeding pursuant to CPLR §§ 301 and 302 because the Defendants have offices in New York. Additionally, each Trust was formed under New York law pursuant to the respective PSA.

27. Venue is proper in this Court pursuant to CPLR § 503(a) and (c) because each Defendant is a domestic or foreign corporation authorized to transact business in the State of New York, with principal offices in New York County.

FACTUAL BACKGROUND

I. MERRILL CREATED THE SECURITIES BY PACKAGING OVER 6,000 RESIDENTIAL MORTGAGE LOANS ORIGINATED BY RESMAE

28. This case concerns residential mortgage-backed securities and breaches of representations and warranties made by Merrill, the entity that organized the securitizations. As the name suggests, these are asset-backed securities (termed Certificates), secured by a pool of mortgage loans made to borrowers for the purchase of residential properties. The Certificates are owned by investors and represent beneficial ownership interests in the respective Trust. In general, distributions of interest and principal on the Certificates are made from payments on the Mortgage Loans underlying the respective Trust. Essentially, as borrowers make payments on the underlying loans, those funds are pooled and distributed to the holders of the securities in accordance with the related securitization documents.

29. The ability of the transaction parties to successfully create and market the RMBS and mortgage loan sales rests on the following essential elements: (i) contractual obligations, payments and other rights set forth in the securitization documents; (ii) representations, warranties and covenants of the institutions that created the RMBS; and (iii) those institutions' commitment to performing their contractual obligations (such as the cure or repurchase obligation). Absent these contractual rights, Merrill could not collect hundreds of millions of dollars of sales proceeds for the Trusts.

30. In an RMBS securitization, the trust and trustee hold the mortgage loans for the benefit of the certificateholders, but the certificateholders ultimately bear the economic

consequences of the mortgage loans' performance or underperformance. The characteristics and risk profiles of those mortgage loans drive the securitization: they affect the interest rates the certificates pay, the amount of certificates that can be issued with certain rating, and the extent of protection or "credit enhancement" built into the securitization.[2] Consequently, the value of the mortgage loans—and with them, the price that the certificateholders are willing to pay for the corresponding certificates—is directly contingent on the credit quality of the underlying mortgage loans and the repurchase remedy for breaches of the representations and warranties that accompanied the loans.

31. In the two securitizations at issue here, ResMAE made (or "originated") the Mortgage Loans to individual borrowers. In 2006, Merrill bought the Mortgage Loans from ResMAE pursuant to its Purchase Agreement with ResMAE and trade confirmations for individual purchases. Merrill then transferred 6,089 such Mortgage Loans with an aggregate principal balance of over $1.1 billion to an affiliate depositor entity, Merrill Lynch Mortgage Investors, Inc., pursuant to an individual Sale Agreement for each Trust. In the Sale Agreements, Merrill assigned to Merrill Depositor its rights to enforce ResMAE's repurchase obligations in the Purchase Agreement and committed to repurchasing the breaching loans, should ResMAE fail to do so.

32. Merrill Depositor in turn conveyed the Mortgage Loans to each Trust (also known as "depositing" the Mortgage Loans) and assigned all of its rights in the Purchase Agreement and the Sale Agreements to the Trusts, in each case pursuant to a PSA. The Trustee is the Party identified under the PSAs with respect to enforcement of the Sale Agreements and the Purchase Agreement on behalf of the Trusts.

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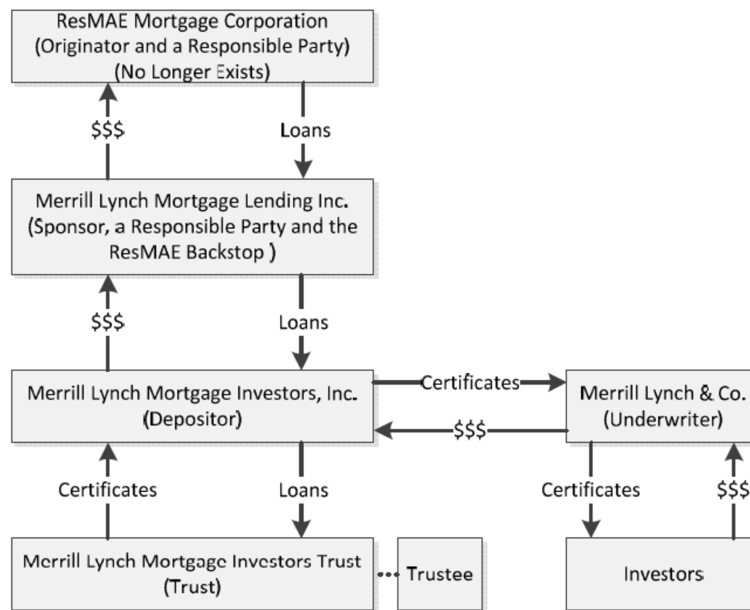
[2] Credit enhancements are features of RMBS that raise the security's credit quality above that of the underlying collateral pool (*e.g.*, extra cash reserves or subordinate securities that will bear losses first).

33. The PSAs, which created and govern the Trusts, outline the substantive rights and obligations of parties to the transaction and outline administration of the Trusts. The PSAs were created by Merrill Sponsor, its underwriter affiliate Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Underwriter"), Merrill Depositor and their counsel. The PSAs are cited in the offering materials to describe administration of the Trusts and rights of the Certificateholders, and are generally relied upon by investors in purchasing the Certificates.

34. The following diagram shows an overview of the transactions and the parties involved. From a glance, it is easy to see that each transaction was designed to allow Merrill and its affiliates to securitize Mortgage Loans and sell the resulting securities to investors.



35. The RM4 Trust and the RM5 Trust then issued securities, termed Certificates, pursuant to the respective PSAs on September 27, 2006 and October 27, 2006, respectively. The Certificates issued by each Trust were backed by the ResMAE Mortgage Loans purchased by such Trusts and each represented an interest in the respective Trust. The Trusts each conveyed their Certificates back to Merrill Depositor, which in turn passed them to the Merrill Underwriter for sale to the public.

36. Another Merrill affiliate, Wilshire, acted as the Servicer following the issuance of the Certificates in each of the Trusts. Wilshire was subsequently acquired by Bank of America Corporation along with Merrill and Bank of America ultimately took over as the Servicer for each of the Trusts.

II. MERRILL GUARANTIED THE CREDIT QUALITY OF THE MORTGAGE LOANS.

37. Because payments made to Certificateholders depend on payments made by borrowers on the underlying Mortgage Loans, the credit quality of the Certificates depends on the credit quality of the underlying Mortgage Loans and the availability of contractual remedies against a sound institution that can repurchase those loans or otherwise compensate the Trust if the representations and warranties are breached.

38. The most important information about the credit quality of the Mortgage Loans is contained in the mortgage origination files, which were assembled by ResMAE when making the loan. These files normally contain the borrower's loan application, verification and analysis of the borrower's income, employment, assets, and debts, the borrower's credit report, an appraisal of the mortgaged property's value, and a statement of the property's occupancy status.

39. Investors in the Trusts were not given access to the individual origination files for a variety of reasons (efficiency and protection of borrower's private information among them). To create the Certificates that could be marketed to investors without access to the underlying collateral, extensive representations and warranties were made in the securitization documents about the quality and characteristics of the Mortgage Loans underlying the respective Certificates by the parties who did have access to the Mortgage Loans—Merrill and ResMAE. The veracity of the representations and warranties was a key component to each securitization transaction.

40. ResMAE made representations and warranties in the Purchase Agreement and in a "bring down letter" that restated certain representations and warranties as of the Closing Date. The Merrill Sponsor made its own representations and warranties and restated certain of the representations and warranties originally made by ResMAE in the Sale Agreement. At a minimum, for the restated representations and warranties, the Trusts could look to Merrill if ResMAE were unable to live up to its representations, warranties, and covenants including ResMAE's obligation to repurchase any breaching loans. Specifically, Merrill stated in Section 1.04(b) of the Sale Agreement:

> To the extent that any fact, condition or event with respect to a Mortgage Loan constitutes a breach of both (i) a representation or warranty of the [ResMAE] under the [Purchase] Agreement or Bring Down Letter and (ii) a representation or warranty of the Sponsor [Merrill] under this Agreement, the sole right or remedy of the Depositor with respect to a breach by the Sponsor of such representation and warranty (other than a breach by the Sponsor of the representations and warranties made pursuant to Sections 1.04(b)(vi) and 1.04(b)(vii)) shall be the right to enforce the obligations of the [ResMAE] under any applicable representation or warranty made by it; provided, however, that ***to the extent [ResMAE] fails to fulfill its contractual obligations under the [Purchase] Agreement then the Depositor shall have the right to enforce such obligations of [ResMAE] against the Sponsor***."

(Emphasis added.) It is reasonable to conclude that this backstop guaranty was essential to Merrill's ability to sell the Mortgage Loans to the Trusts and Certificates to investors on favorable terms because investors would have necessarily been less willing to purchase Certificates backed only by representations and warranties of a less secure financial institution—ResMAE. Indeed, ResMAE went into bankruptcy only three months after the Certificates were issued.

41. Section 2.03 of the PSAs summarized the backstop guaranty as follows:

> In addition to the representations and warranties of [ResMAE] in the [Purchase] Agreement that were brought forward to the Closing Date pursuant to the Bring Down Letter with respect to each Mortgage Loan [*i.e.*, representations that were not made or restated by Merrill], [ResMAE] made ***certain additional covenants***

> ***regarding such Mortgage Loan***, as set forth in the [Purchase] Agreement [*i.e.*, representations that were made or restated]. ***With respect to any breach of such additional covenants*** that materially and adversely affects the interests of the Certificateholders in such Mortgage Loan, ***the Sponsor shall repurchase such Mortgage Loan*** in accordance with this Section 2.03.

(Emphasis added.)

42. Merrill's backstop guaranty and representations covered numerous key aspects relating to loan quality. Merrill represented and warranted that the information set forth in the related mortgage loan schedule, which included owner-occupancy status, the appraised value of the property, the loan-to-value ratio, and the borrower's debt-to-income ratio, "is complete, true and correct." (Purchase Agreement, Ex. A, § 7.02(1); remade and restated as of the Closing Date by Merrill in Sale Agreements, Ex. B, § 1.04(b)(iv).)

43. Merrill also provided a backstop representation that "[t]here is no default, breach, violation 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 default, breach, violation or event of acceleration." (Purchase Agreement, Ex. A, § 7.02(19), remade and restated as of the Closing Date in Sale Agreements, Ex. B, § 1.04(b)(iv).) A common event of default under the mortgage note is a borrower's misrepresentation about income, employment, and intent to occupy the property, as well as the borrower's failure to make timely payments on the mortgage loan.

44. Merrill also provided a backstop representation that "the Mortgage Loan is in compliance with all requirements set forth in the related Trade Confirmation, the Mortgage Loan is not an Ineligible Loan as set forth in the related Trade Confirmation and the characteristics of the related Mortgage Loan Package as set forth in the related Trade Confirmation are true and correct." (Purchase Agreement, Ex. A, § 7.02(2), remade and restated as of the Closing Date by Merrill in Sale Agreements, Ex. B, § 1.04(b)(iv).) On information and belief, each Trade

Confirmation in turn represented that "Mortgage Loans were underwritten in accordance with the underwriting guidelines of Seller [ResMAE] in effect at the time of origination" and defined "Ineligible Loans" as loans whose inclusion "would cause rating agencies to be unwilling to rate securities backed by that loan pool, delinquent loans, and loans with LTV greater than 100% or DTI great than 60%, among others.

45. Merrill also provided a backstop representation that it had "no knowledge of any circumstances or condition with respect to the Mortgage, the Mortgaged Property, the Mortgagor or the Mortgagor's credit standing that can reasonably be expected to cause the Mortgage Loan to be an unacceptable investment, cause the Mortgage Loan to become delinquent, or adversely affect the value of the Mortgage Loan." (Purchase Agreement, Ex. A, § 7.02(34), remade and restated as of the Closing Date by Merrill in Sale Agreements, Ex. B, § 1.04(b)(iv).) This was a broad representation intended to give investors comfort that the process used in originating the Mortgage Loans followed accepted underwriting practices and was free from fraud, misrepresentation, and negligence.

46. A full list of all relevant representations and warranties appears in the Purchase Agreement and the Sale Agreements. They are incorporated here by reference. (Purchase Agreement, Ex. A; Sale Agreements, Ex. B).

47. In the event that a breach of representation and warranty with respect to a specific loan is discovered "which adversely affects the value of a Mortgage Loan or the Mortgage Loans," the Purchase Agreement requires ResMAE to promptly cure the defective loan or, failing that, buy back the loan from the Trust within 75 days. If ResMAE fails to perform, Merrill must step in and cure or repurchase the defective loan pursuant to Section 1.04(b) of the Sale Agreements.

48. In addition to guarantying ResMAE's obligations, Merrill made several direct representations in Section 1.04(b) of the Sale Agreements, including that "[n]one of the Mortgage Loans are 'high cost' as defined by applicable predatory and abusive lending laws." High cost mortgage loans are loans with an interest rate or closing costs that exceed the statutory maximum. When Merrill's representation concerning high cost loans is breached, Merrill must "[w]ithin 60 days of the discovery of any such breach, . . . either (a) cure such breach in all material respects" or "(b) repurchase such Mortgage Loan or any property acquired in respect thereof." (Sale Agreement, § 1.04(b).)

49. Through the provisions in the Sale Agreements, as reflected in the PSAs, these securitizations are structured to provide a backstop guaranty by Merrill for ResMAE's performance as to repurchase provisions related to the Mortgage Loans. The securitizations are structured so that ResMAE and Merrill, and not the Trusts, carry the risk of any discrepancy between the stated and actual loan characteristics. This makes sense because ResMAE and Merrill (unlike the Trusts) were the parties tasked with reviewing the loan documentation in connection with the purchase and securitization of the Mortgage Loans. The Trusts and the Certificateholders rely on the truthfulness and accuracy of the representations and warranties because they could not perform the diligence done by the loan originator and Sponsor prior to purchasing Certificates. By making representations and warranties and guarantying ResMAE's representations and obligations through the backstop, Merrill sought to assure the Trusts and investors that it had done its diligence and itself was at risk if the representations and warranties were untrue.

50. Just three months after the two securitizations closed, ResMAE filed for bankruptcy and thus the very risk of ResMAE's non-payment that Merrill's backstop was

intended to mitigate in fact materialized. Because ResMAE has been liquidated, it can no longer fulfill its contractual obligations. Accordingly, Merrill is obligated to repurchase the breaching loans identified by the Trusts, including any loans for which Merrill has individual notice of breaches. Merrill is also obligated to repurchase loans that breach its direct representation and warranty concerning high cost loans.

III. A REVIEW OF ORIGINATION AND SERVICING FILES SHOWS BREACHES OF REPRESENTATIONS AND WARRANTIES REGARDING THE MORTGAGE LOANS.

51. A lengthy (and expensive) review of Origination and Servicing Files for certain of the Mortgage Loans in each Trust and payment default analysis with respect to certain mortgage loans were undertaken in late 2011 and early 2012. The review and the analysis found breaches in the mortgage pools that collateralize the two Trusts. Of the loans reviewed, at least 73% of the loans in the RM4 Trust and at least 76% of the loans in the RM5 Trust breached representations and warranties in a manner that materially and adversely affects the value of the Mortgage Loan and the interest of the Certificateholders therein.

52. These breaches are described in the reports attached hereto as Exhibit D and Exhibit E, which are incorporated here by reference. The reports summarize each of the examined Mortgage Loans and specify the representations and warranties that were breached for the Group 1 and Group 2 loans at issue.[3] The Trustee has given Merrill notice of the breaches, pursuant to Section 1.04(b) of the Sale Agreements and Section 2.03 of the PSAs. Accordingly, Merrill must repurchase the non-compliant loans identified by the Trustee, as well as any other loans that breach representations and warranties.

53. What follows is a summary of some of the typical types of breaches.

[3] Even more detailed reports were provided to Merrill by the Trustee. Because the reports include identifying private information about specific borrowers—such as addresses and employment status—the complete reports could be offered to the Court after the parties and the Court have had the opportunity to discuss a protective order.

A. Borrowers' Incomes and Employment Were Misstated

54. A borrower's income drives the borrower's ability to repay a Mortgage Loan; the borrower has to earn enough money every month to make the required loan payment.
A borrower's ability to repay a loan is also impacted by her employment status; the borrower must have a job that will provide a steady stream of income for the foreseeable future, putting the borrower in a financial position to make the required loan payments over time. If the borrower's income is not commensurate with the amount of the loan payments, and/or the borrower does not have steady employment, then the likelihood of that borrower defaulting increases and the loan's risk profile is negatively impacted.

55. In addition, a borrower's income represents both the saving potential of the borrower and the likely ability of the borrower to gain subsequent employment at a particular income level. Borrowers with higher income are able to save more for future periods, including "rainy days;" borrowers with higher income are also more likely to gain future employment at similar income levels.

56. An inflated income and/or misrepresented employment information thus negatively alters the Mortgage Loan's risk profile, and, accordingly, negatively affects the pricing and marketability of the loan and of the Certificates collateralized by the loan on day one. If the borrower's income or employment does not allow her to make timely payments on the loan, then the likelihood that she will default increases, which in turn negatively impacts the actual risk profile of the corresponding loan, thereby reducing the value of the loan and the interest of the Trust and Certificateholders therein.

57. Merrill represented that ResMAE applied guidelines that required it to confirm the borrower's income. The income was then used to calculate the debt-to-income ratios that Merrill represented to be accurate in Section 1.04(b) of the Sale Agreements. For example,

according to the Prospectus Supplement for each securitization, prepared by Merrill,[4] "ResMAE's underwriters verify the income of each applicant under the Full Documentation and Limited Documentation programs." (Prospectus Supplements, at S-36.) The full documentation program required the borrower to provide "verification of stable year to date income and the preceding year's income." (*Id.*) Under a limited documentation program, borrowers were "qualified based on verification of adequate cash flow by means of personal or business bank statements." (*Id.*)

58. ResMAE's guidelines further provided that "under all programs, the income stated must be reasonable and customary for the applicant's line of work." (*Id.*) The guidelines also required a pre-closing audit "to confirm that the borrower is employed as stated on the mortgage application," whether through phone contact to the place of business, by obtaining a valid business license, or through Nexis On-Line Services. (*Id.*) According to Merrill, "[t]he underwriting staff fully review[ed] each loan to determine whether ResMAE's guidelines for income, assets, employment and collateral are met." (*Id.* at S-36.) Merrill further represented that ResMAE performed additional verification of the underlying income and employment documents during the post-funding audit. (*Id.* at S-37).

59. The forensic review found that many borrowers had listed incomes or occupations that were patently unreasonable, should have set off red flags during the underwriting process, and/or were not verified. For example:

(a) Borrower stated on his loan application that he was a technician of a maintenance company, earning $9,950 per month. However, the 2005 W-2 submitted with the application was altered: it stated that the borrower earned $105,000 in 2005, but the same W-2 from the loss mitigation file

[4] *See* MLMI 2006-RM4 Prospectus Supplement, *available at* http://www.sec.gov/Archives/edgar/data/1374555/000095012306012027/y25175e424b5.txt; MLMI 2006-RM5 Prospectus Supplement, *available at* http://www.sec.gov/Archives/edgar/data/1378278/000095012306013054/y26012e424b5.txt.

showed income of only $39,751. The DTI using the actual income was 124.22%, exceeding the permitted maximum of 47.57%.

(b) The borrower stated on his application that he worked as a foreman for an aerospace company, earning $11,200 per month. ResMAE's guidelines required that "the income stated must be reasonable and customary for the applicant's line of work." (Prospectus Supplements, at S-36.) The stated income is unreasonable and should have put the underwriter on notice of misrepresentation. In addition, when contacted by the forensic review firm, the borrower's employer stated that the borrower's monthly income was only $2,036 at the time. The DTI using the actual income was 100.25%, exceeding the permitted maximum of 41.24%.

(c) The borrower stated on his loan application that he worked as a nurse, earning $6,900 per month. However, the employer subsequently verified that the borrower was a program specialist at the time of the loan origination, and not a nurse, and that he was earning only $2,365.12 per month. The DTI using the actual income was 125.93%, exceeding the permitted maximum of 41.24%.

60. Such misstatements of borrowers' income and employment breach many of Merrill's representations and warranties, including without limitation its representations concerning the accuracy of the loan schedule, compliance with trade confirmation requirements (including with respect to underwriting guidelines), and absence of events of default and adverse conditions. Where there is a breach of a representation and warranty regarding a borrower's income and/or employment, the risk of default is greater, and thus the value of the Mortgage Loan is diminished. Therefore, such breaches by ResMAE and Merrill materially and adversely affect the value of the Mortgage Loans and the Certificateholders' interest therein.

B. Borrowers' Debts Were Misstated

61. A borrower's level of debt impacts his ability to repay a loan; the less debt the borrower has at the time he takes out the loan, the more funds he will have available to make his loan payments. A borrower must not have a debt load that would make it difficult or impossible for him to make the required payments. The greater the borrower's debt, the greater the likelihood that he will default, which in turn negatively impacts the actual risk profile of the

corresponding loan, thereby reducing the value of the loan and the interest of the Trust and Certificateholders therein.

62. Merrill represented that ResMAE applied guidelines that required it to assess the borrower's level of indebtedness. According to the RM4 and RM5 Prospectus Supplements, "ResMAE consider[ed], among other things, a mortgagor's credit history, repayment ability and debt service-to income ratio." (Prospectus Supplements, at S-35.) Merrill also represented in the Prospectus Supplements that in evaluating the credit quality of the borrowers, ResMAE used credit bureau risk scores, which list the borrower's past and present debts. (*Id.* at S-35 – 36.) ResMAE also verified credit rating and documentation in the course of post-funding audit. (*Id.* at S-37).

63. The forensic review found that many borrowers had misrepresented their debts, frequently not disclosing recent home purchases. For example:

(a) A mortgage application failed to disclose all of the properties that the borrower owned at the time of origination. In the months prior to the loan's closing, the borrower purchased five other properties with liens totaling over $2.2 million.

(b) A mortgage application failed to disclose all of the borrower's properties that the borrower owned at the time of origination. In the weeks prior the loan's closing, the borrower purchased four other properties with liens totaling over $2.1 million.

64. Such misstatements of borrowers' debts breach many of Merrill's representations and warranties, including without limitation its representations concerning the accuracy of the loan schedule, compliance with trade confirmation requirements (including with respect to underwriting guidelines), and absence of events of default and adverse conditions. Accordingly, misstatements of the borrower's debts materially and adversely affect the value of the Mortgage Loans and the interest of the Certificateholders therein.

C. Debt-to-Income Ratios Were Misstated

65. A key measure of a borrower's ability to afford mortgage payments is "debt-to-income" ratio (or "DTI" ratio), which compares the borrower's monthly debt obligations to his monthly income. The higher the DTI (*i.e.*, the greater the percentage of monthly income a borrower must devote to debt payments), the greater the risk on day one that the borrower will be unable to repay his Mortgage Loan due to high debt levels. Conversely, a lower DTI allows the borrower to save money to make mortgage payments during adverse economic conditions.

66. Merrill represented that ResMAE applied guidelines that provided for maximum DTI ratios for different types of loan products. For example, for full documentation and limited documentation programs, DTIs had to be 55% or less for loans with loan-to-value ratios of 85% or less and 50% or less for loan-to-value ratios greater than 85%. (Prospectus Supplements, at S-38.) For stated documentation program, ResMAE required a DTI of 50% or less. (*Id.*)

67. Merrill provided the Trusts with the DTI ratio for each loan and represented that, in each case, the stated DTI ratio was correct. (*See* Sale Agreements, Ex. B, § 1.04(b)(i), (iv); Purchase Agreement, Ex. A, § 7.03(1).)

68. The forensic review found that the true DTI ratio for many of the borrowers was higher than the ratio represented and warranted by Merrill, and was often much higher than the maximum DTI ratio allowed by the guidelines. For example:

(a) A mortgage loan was made subject to a maximum DTI ratio of 55%. But the borrower's true DTI ratio, calculated using the borrower's actual income and debts, was 354.08%.

(b) A mortgage loan was made subject to a maximum DTI ratio of 50%. But the borrower's true DTI ratio, calculated using the borrower's actual income and debts, was 215.6%.

69. Such misstatements of borrowers' DTI ratios breach many of Merrill's representations and warranties, including without limitation its representations concerning the

accuracy of the loan schedule, compliance with trade confirmation requirements (including with respect to underwriting guidelines), and absence of adverse conditions. Higher than represented DTI ratios negatively impact the ability of the borrower to repay the Mortgage Loan, which in turn negatively impacts the actual risk profile of the corresponding loan, thereby reducing the value of the loan and the interest of the Trust and Certificateholders therein. Accordingly, misrepresentations of DTI ratios materially and adversely affected the value of the Mortgage Loans and the interest of the Certificateholders therein.

D. Properties' Appraised Values Were Misstated

70. An accurate appraisal of the property's value is fundamental to ensuring that the investor is not being asked to lend more than the property is worth and that it could recoup the loan amount in full through foreclosure if the borrower defaults. Merrill and ResMAE made extensive representations concerning appraisal processes that were ostensibly intended to determine the true value of the property. For example, the Purchase Agreement provided that "the Mortgage File contains an appraisal of the related Mortgaged Property which satisfied the standards of the [ResMAE's] underwriting guidelines and prudent mortgage lenders in the secondary mortgage market was made and signed, prior to the approval of the Mortgage Loan application, by a qualified appraiser, duly appointed by the Seller, who had no interest, direct or indirect, in the Mortgaged Property." (Purchase Agreement, Ex. A, § 7.02(29), applicable by virtue of Purchase Agreement, Ex. A, § 7.02(2), remade and restated as of the Closing Date in Sale Agreements, Ex. B, § 1.04(b)(iv).)

71. In addition, Merrill provided the Trusts with the appraised property value for each loan and represented that, in each case, the stated value was correct. (*See* Sale Agreements, Ex. B, § 1.04(b)(i), (iv); Purchase Agreement, Ex. A, § 7.03(1).)

72. The forensic review found that the true appraised value for many of the borrowers was significantly lower than the value represented and warranted by Merrill. For example:

(a) The appraisal dated July 5, 2006 valued the property at $640,000, even though the property had been purchased just five months before for $379,039 and had no improvements since the purchase. A retroactive appraisal by the forensic review firm valued the property at just $439,000, based on comparable sales at the time of origination. Further investigation uncovered that in 2008, the loan officer and the borrower were charged with conspiracy, wire fraud, money laundering and aiding and abetting mortgage fraud. According to the indictment, the property was purchased through straw buyers, the appraisal values were inflated, and final HUDs falsified.

(b) The appraisal at origination valued the property at $325,000, even though the same property had been purchased for $280,000 just two months earlier and had no documented improvements since the purchase. The applicable guidelines required the lesser of the current appraised value or the original purchase price, plus the documented cost of improvements, to be used to calculate the property's value when the property is owned for less than 12 months. Accordingly, the lesser value of $280,000 should have been used.

73. Such misstatements of the appraised value breach many of Merrill's representations and warranties, including without limitation its representations concerning the accuracy of the loan schedule, compliance with trade confirmation requirements (including with respect to underwriting guidelines), and absence of adverse conditions. Lower than represented appraised values negatively impact the ability of the investor to recoup the amount of the Mortgage Loan, which in turn negatively alters the Mortgage Loan's risk profile, and negatively affects the pricing and marketability of the loan and of the Certificates collateralized by the loan on day one. Accordingly, misrepresentations of the property values materially and adversely affected the value of the Mortgage Loans and the interest of the Certificateholders therein.

E. Loan-to-Value and Combined Loan-to-Value Ratios Were Misstated

74. Another key measure of a borrower's likelihood to default is the loan-to-value ratio (or "LTV" ratio), which expresses the amount of the mortgage loan as a percentage of the

total appraised value of the property. For example, if a borrower borrows $80,000 to buy a house worth $100,000, then the LTV ratio is $80,000/$100,000, or 80%—the remaining $20,000 of the house's value reflects the borrower's 20% equity stake in the house. A combined loan-to-value ratio (or "CLTV" ratio) expresses the amount of all of the loans secured by a property as a percentage of that property's appraised value; that is, it accounts for any additional liens.

75. A borrower with a sizable equity stake in a property has more to lose than a borrower with a small stake; thus, a borrower with a large equity position has financial incentives not to default and lose his equity. Conversely, a borrower with little or no equity stake in a property has little financial incentive to avoid default. And if a borrower with a small equity stake does default, then there is a greater risk that the resulting foreclosure will produce a loss for the lender—or, in this case, for the Certificateholders who are entitled to the loans' cash flows. The higher the LTV and CLTV, the greater the likelihood that the borrower will default.

76. Merrill represented that ResMAE followed guidelines that restricted the types and amounts of loan products available to borrowers based on the subject properties' LTV ratios. The underwriting guidelines established the maximum permitted loan-to-value ratio for each loan type based upon various risk factors. (*See* Prospectus Supplements, at S-35.) For example, to qualify for a 100% LTV within "A" risk category for a mortgage loan originated after May 2006, borrower had to have a FICO score of at least 600, have at least two years since any foreclosure activity, and have no liens or judgments affecting title. The maximum allowable LTV would then be "reduced [for specific loans] based on fico score, reduced income documentation, non-owner occupied properties" and other factors. (Prospectus Supplements, at S-37.)

77. In the loan information provided to the Trusts, Merrill made specific representations regarding the LTV and CLTV ratios of the loans in the Trusts. In Mortgage Loan Schedule provided to the Trusts, Merrill represented that no loan had an LTV or CLTV ratio greater than 100%. Indeed, the Prospectus Supplements stated that the average original loan-to-value ratio of the Mortgage Loans was 82.26% for the RM4 Trust's loans and 83.86% for the RM5 Trust's loans. Merrill further represented for both Trusts that no Mortgage Loan had a combined loan-to-value ratio greater than 100.00%.

78. The forensic review found that the true LTV and CLTV ratios for many of the properties at issue were higher than those represented by Merrill, and were often much higher than the maximum CLTV ratios allowed by the guidelines. For example:

(a) The Mortgage Loan Schedule stated that the loan had an LTV of 95%. But the property's actual LTV was 139%.

(b) The Mortgage Loan Schedule stated that the loan had an LTV of 90%. But the property's actual LTV was 113.3%.

Such misstatements of the properties' LTV and CLTV ratios breach many of Merrill's representations and warranties, including without limitation its representations concerning the accuracy of the loan schedule, compliance with trade confirmation requirements (including with respect to underwriting guidelines), and absence of adverse conditions. These breaches materially and adversely affect the value of the loans in each of the two Trusts and the interest of the Certificateholders therein because, among other things, borrowers with a smaller equity stake in the property are more likely to default.

F. Properties' Owner-Occupancy Statuses Were Misstated

79. If a property is not owner-occupied, then the likelihood that the borrower will default increases, which in turn negatively impacts the actual risk profile of the corresponding loan on day one, thereby reducing the value of the loan and the interest of the Trust and

Certificateholders therein. Borrowers who live in mortgaged properties are known to be less likely to "walk away" from those properties and default on their mortgage obligations than borrowers who buy residential properties as investments or as vacation homes.

80. Merrill represented that ResMAE followed guidelines that required greater equity for non-owner occupied properties. ResMAE's guidelines stated that "[l]oan-to-value ratios are reduced based on . . . non-owner occupied properties, second homes, properties with 3-4 units." (Prospectus Supplements, at S-37.)

81. Merrill provided the Trusts with "a code indicating whether the Mortgaged Property is owner-occupied" and represented that in each case, the owner-occupancy information was correct. (*See* Sale Agreements, Ex. B, § 1.04(b)(i), (iv); Purchase Agreement, Ex. A, § 7.03(1).) In all, Merrill represented that 95% of the RM4 Trust's properties and 94% of the RM5 Trust's properties were owner-occupied.

82. The forensic review found that many of the subject properties listed as "owner-occupied" were not, in fact, occupied by the borrower. For example, in one instance, a mortgage loan stated that the subject property was to be owner-occupied, but the appraisal in the loan file marked the property as tenant occupied. The review of the borrower's driver's license, vehicle and voter registration records, as well as a subsequent bankruptcy filing, also showed that the owner continued to reside at his previous address. In another instance, the fact that the property was located 119 miles away from the stated business address indicates that the borrower did not intend to occupy the property.

83. Such misstatements of owner occupancy breach many of Merrill's representations and warranties, including without limitation its representations concerning the accuracy of the loan schedule, compliance with trade confirmation requirements (including with respect to

underwriting guidelines), and absence of adverse conditions. These breaches materially and adversely affect the value of the loans in each of the two Trusts and the interest of the Certificateholders therein because, among other things, borrowers that do not occupy the property are more likely to default.

G. Loans with Payment Defaults Were Included in the Trusts

84. Merrill represented that "there is no default, breach, violation 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 default, breach, violation or event of acceleration." (Purchase Agreement, Ex. A, § 7.02(19); remade and restated as of the Closing Date by Merrill in Sale Agreements, Ex. B, § 1.04(b)(iv).) However, at the time of the respective securitization's closing, at least 135 loans in the RM4 Trust and at least 108 loans in the RM5 trust were delinquent, which constitutes a default under the Mortgage Note. A loan for which the borrower is not making payments negatively impacts the risk profile of the loan, and, accordingly, adversely and materially affects the pricing and marketability of the loan and of the Certificates. A loan that is delinquent early, on the securitization's closing date, is already impaired and is more likely to fail to perform. The value of Certificates backed by non-performing loans is lower.

H. A High Cost Loan Was Included in the RM5 Trust

85. Loan originators are prohibited by applicable predatory and abusive lending laws from issuing high cost loans, *i.e.* loans with interest rates or closing fees that exceeded the statutory maximums. Borrowers given a high cost loan are less likely to be able to afford the monthly payment on the loan and are more likely to default. Thus, whether the loan is predatory impacts the risk profile of the loan and, accordingly, adversely and materially affects the pricing and marketability of the loan and of the Certificates collateralized by the loan on day one.

86. Merrill represented in Section 1.04(b) of the Sale Agreement that none of the Mortgage Loans it sold into the Trusts were high cost loans. However, at least one loan in the RM5 Trust was a high cost loan, because its loan fees, totaling, $14,530.70 exceeded the applicable high cost fee limit by $2,205.71. This breach materially and adversely affects the value of the loan and the interest of the Certificateholders therein because, among other things, borrowers with high cost loans are more likely to default.

IV. SUCCESSOR TRUSTEE BANK OF AMERICA DID NOT RELEASE THE TRUSTS' REPURCHASE CLAIMS AGAINST MERRILL

87. In breach notices submitted on March 16, 2012, March 19, 2012, March 20, 2012, April 19, 2012, May 4, 2012, May 23, 2012, and December 14, 2012, the Trustee notified Merrill of the breaching loans identified to date and demanded that Merrill repurchase them. Merrill responded that it has no repurchase obligations for the Trusts' loans because Bank of America as Successor Trustee, as former trustee and Merrill affiliate, supposedly released Merrill of all liability when it executed the Allocation Agreement on behalf of the Trusts, allocating the proceeds from ResMAE bankruptcy to several trusts and three Merrill entities. By its terms, the Allocation Agreement did no such thing. And even if it did, it would be void because Bank of America as Successor Trustee lacked authority to release its own affiliate's liability to the Trusts. Alternatively, if the release is effective, Bank of America as Successor Trustee is liable for acting against the interests of the Trusts without authorization and for the benefit of its own affiliate.

A. The ResMAE Bankruptcy Concerned the Trusts' EPD Claims Against ResMAE Debtor

88. In February 2007, just three months after the securitizations closed, ResMAE filed for Chapter 11 bankruptcy protection.

89. Two months later, in April 2007, LaSalle filed claims on behalf of the Trusts against ResMAE for breaches of representations and warranties related to five MLMI trusts, including the Trusts at issue in this case. These claims concerned EPD repurchase claims for loans where the borrower had missed the first or second payment on the mortgage note. The EPD obligations were automatically triggered by missed payments. In contrast, most of the breaches at issue in this action involve breaches of representations and warranties that were not discovered until years later.

90. At the time, Merrill also submitted a claim to the bankruptcy court involving EPD and other breaches for loans that were still held by Merrill and had not yet been sold to securitization trusts.

91. Also in April 2007, Bank of America Corporation announced that it would acquire LaSalle. The acquisition was completed in October 2007.

92. In July 2008, LaSalle consented to a settlement resolving claims against ResMAE by the five MLMI trusts and Merrill (as well as its two affiliates) (Ex. M) for a combined $10 million to be allocated among the five MLMI trusts and the Merrill entities at a later date. The amount was substantially lower than the value of the claims asserted by the trusts and Merrill. The RM4 and RM5 Trusts alone asserted claims on EPD loans with unpaid principal balance of $84.4 and $23.6 million respectively. The actual distribution amount ultimately paid out by the ResMAE estate to the five MLMI trusts was just $1.7 million, of which the Plaintiff Trusts received less than $600,000. The share of the proceeds received by the Plaintiff Trusts is the same as the Plaintiff Trusts' share of the total EPD Loan balance for the five MLMI trusts. The motion to approve the Bankruptcy Settlement made clear that the settlement would resolve pending claims against ResMAE; no mention of Merrill's release was made (*See* Motion

Pursuant to Bankruptcy Rule 9019 to Approve a Stipulation of Settlement Resolving Claims, Ex. H, at 6-8.) The bankruptcy court approved the Bankruptcy Settlement on July 30, 2008.

93. On July 8, 2008, prior to the approval, LaSalle sent out a notice of settlement (attached hereto as Ex. I), notifying MLMI Certificateholders of the terms of the proposed Bankruptcy Settlement and giving them an opportunity to object to the settlement. The notice stated that the settlement would release claims against ResMAE submitted in bankruptcy and explained that the bankruptcy proceeds would be allocated in a subsequent agreement. The notice again made no mention of releasing any claims against Merrill. Specifically, the notice stated:

- "The Trustee further understands that the vast majority of the alleged claims [against ResMAE] in the [bankruptcy] case are for breaches of representations and warranties arising out of loan sales, including repurchase obligations arising out of so-called 'early payment default' claims."
- "Merrill Bank has agreed with the Trustee that any funds received by it pursuant to the [ResMAE Settlement] will be held in escrow until all parties reach agreement on how such proceeds are to be allocated among the various Merrill Entities."
- "As more fully set forth therein, the [Bankruptcy Settlement] also provides for mutual release of claims <u>between ResMAE and the creditor parties thereto</u>." (Emphasis added.)

94. Two months later, on September 14, 2008, Bank of America Corporation announced its acquisition of Merrill. The following month, LaSalle (already an affiliate of Bank of America) was merged into Bank of America and Bank of America became trustee for the five MLMI trusts.

95. Bank of America's acquisition of Merrill closed on January 1, 2009. A month later, on February 2, 2009, Bank of America submitted its notice of resignation as Successor Trustee on the account of its conflict of interest, stating in the notice of resignation that the resignation was "[i]n connection with the acquisition of Merrill Lynch & Co. Inc." (Ex. J, at 1).

The resignation did not become effective until U.S. Bank took over as the trustee of the Trusts on March 31, 2009.

96. Less than two weeks before it resigned, however, Bank of America as Successor Trustee, still trustee for the MLMI trusts, entered into a second settlement on behalf of the Trusts to allocate proceeds of ResMAE's bankruptcy (Ex. K). While the Allocation Agreement is dated "as of December 31, 2008"—just a day before the acquisition of Merrill Lynch closed—the date stamped on Merrill's faxed signature page is January 22, 2009, which suggests that the settlement was not signed until three weeks after Bank of America acquired Merrill.

97. At the time of the acquisition, Bank of America and Merrill were under pressure to reduce Merrill Lynch's liabilities, as internal e-mails reveal. (*See* Ex. L.)

98. Merrill now claims that this Allocation Agreement released all of its liability to the Trusts. But it did not. The Allocation Agreement provided in Section 8:

> As of the Effective Date, each of the Trusts and the Trustee hereby irrevocably and absolutely releases, acquits and discharges each of the Merrill Parties, and each of their respective officers, directors, managers, employees, attorneys, consultants, agents and advisors, and any person acting on its or their behalf, and each of their successors and assigns, of and from any and all claims, causes of action, actions, fees, costs and expenses, of any type whatsoever, direct or derivative, contract or tort, legal or equitable, known or unknown, common law or statutory, contingent or fixed, liquidated or unliquidated, matured or unmatured, that arise out of or relate in any way to any or all of the Claims; provided, that ***nothing in this Section 8(b) or the Agreement shall act as a waiver, nor shall it affect in any way, the rights and protections to which the Trustee is entitled under the PSAs and related trust documents for the Trusts*** . . . .

(Emphasis added.)

99. The Allocation Agreement defined the settled "Claims" as "claims on account of the EPD Loans, the Merrill Claims, and the Trust Claims." These definitions in turn referred to the Trusts' and Merrill's claims against ResMAE made in the ResMAE bankruptcy proceeding:

a) EPD Loans: loans included in "a schedule (the 'Repurchase Schedule') [that] was sent to Resmae listing Mortgage Loans with respect to which there were EPD Breaches" on or about December 12, 2006.

b) Merrill Claims: claims of the three Merrill entities in the ResMAE bankruptcy, including EPD claims.

c) Trust Claims: Claims filed by each Trust "[o]n or about April 27, 2007 . . . in the Bankruptcy Case in connection with the [Transfer] Agreement, each of which asserted an unliquidated general unsecured claim on account of, among other things, the Trust EPD Loans."

100. Describing the underlying facts, the Allocation Agreement makes clear that the Bankruptcy Settlement covered no other claims against Merrill:

> G. Prior to the Petition Date, certain disputes arose with Resmae on account of Resmae's repurchase obligations under the [Transfer] Agreement pertaining to EPD breaches. On or about December 12, 2006, ***a schedule (the "Repurchase Schedule") was sent to Resmae listing Mortgage Loans with respect to which there were EPD Breaches (the "EPD Loans")***. A copy of the Repurchase Schedule is attached as Exhibit A. As of December 12, 2006, the unpaid principal balance ("UPB") of the EPD Loans that are or were ***owned by the [five] Trusts (the "Trust EPD Loans")*** aggregated $302,634, 107, and the UPB of the EPD Loans that are or were ***owned by MLML (the "MLML EPD Loans")*** aggregated $5,621,872.84.
>
> H. Resmae disputed that it was obligated to repurchase a substantial majority of the ***EPD Loans*** because, among other reasons, repurchase notices were not provided in a timely manner for a portion of the EPD Loans, and many of the EPD Loans were current as of December 12, 2006. In pleadings filed by Resmae in the Bankruptcy Case, Resmae made similar allegations.
>
> I. On or about April 27, 2007, MLML [Merrill Sponsor] filed a proof of claim in the Bankruptcy Case in connection with the [Transfer] Agreement, which asserted an unliquidated general unsecured claim ***on account of, among other things, the MLML EPD Loans*** (the "MLML Claim").
>
> L. On or about April 27, 2007, each Trust filed a proof of claim in the Bankruptcy Case in connection with the [Transfer] Agreement, each of which asserted an unliquidated general unsecured claims ***on account of, among other things, the Trust EPD Loans*** (collectively, the "Trust Claims.")

(Emphasis added.)

101. The release in the Allocation Agreement specifically stated that nothing in the settlement "shall act as a waiver, nor shall it affect in any way, the rights and protections to which the Trustee is entitled under the PSAs and related trust documents for the Trusts." Claims not asserted in the ResMAE bankruptcy were preserved, including claims against Merrill on the breaching loans at issue in the ResMAE bankruptcy, to the extent that the Bankruptcy Settlement did not satisfy their full amount. Merrill had notice of these claims since the ResMAE bankruptcy proceedings and must repurchase the affected loans.

102. The release in the Allocation Agreement, by its terms, does not shield Merrill from repurchase liability to the Trusts. But even if it did, any release by Bank of America as Successor Trustee extinguishing the liability of its affiliate Merrill would not be enforceable—it was not authorized by Certificateholders, it would be contrary to the notice to Certificateholders, it would not comply with the contractual terms of the PSAs and the Sale Agreements for amending the terms governing Merrill's liability, and it would be a product of self-dealing. The facts leading up to the Allocation Agreement make it clear that the release, even if somehow applicable, would have to be set aside as void and unenforceable.

V. BANK OF AMERICA AND WILSHIRE FAILED TO NOTIFY THE TRUSTS OF BREACHES OF REPRESENTATIONS AND WARRANTIES

103. In their role as Servicers, Wilshire and Bank of America were required to notify the Trustee if they discovered "a breach of any of such representations and warranties that adversely and materially affects the value of the related Mortgage Loan . . . or the interests of the Certificateholders." (PSAs, Ex. C, § 2.03(c).)

104. Both Wilshire and Bank of America, as Servicers of the Mortgage Loans, modified mortgages in certain instances in which borrowers were unable to make loan payments.

Wilshire and Bank of America likely became aware of breaches of representations and warranties that adversely and materially affect the value of the related Mortgage Loan and the interests of the Certificateholders when they performed loan modifications for Mortgage Loans in the Trusts—a process in which the lender and the borrower agree to modify the terms of a Mortgage Loan. This process involves scrutinizing the underlying Origination and Servicing Files and any supplemental information provided by the borrower to assess the borrower's ability to repay.

105. Since the closing of the securitizations, Wilshire and Bank of America modified 247 Mortgage Loans that represented some $54.77 million in scheduled balances in the RM4 Trust and 296 Mortgage Loans that represented some $60.96 million in scheduled balances in the RM5 Trust. It is unlikely that Wilshire and Bank of America could have modified these Mortgage Loans without becoming aware of breaches.

106. Indeed, documentation in the loan servicing files uncovered during the loan file investigation confirms that Wilshire and Bank of America knew of information indicating breaches because that information was contained in the servicing files they created. In one instance, the borrower claimed to earn $6,700 per month on the loan application, but subsequent bankruptcy filings included in the servicing file reflected an income of only $2,122 per month. In yet another instance, an audited credit report obtained after the loan was issued and included in the servicing file showed that the borrower had over $40,000 in undisclosed debt opened the same month that the loan closed.

107. Despite this knowledge, Wilshire and Bank of America did not notify the Trusts of breaches of representations and warranties. By failing to notify the Trusts of these breaches, Wilshire and Bank of America breached their obligations under Section 2.03(c) of the PSAs.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
Breach of Contract: Repurchase
(Against Merrill)

108. Plaintiffs repeat all the foregoing allegations as though fully set forth herein.

109. This is a claim against Merrill for breach of contract with respect to the Sale Agreements, valid and binding contracts that govern the Trusts.

110. Merrill is a party to the Sale Agreements as Seller.

111. Merrill has repurchase obligations under the Sale Agreements as Seller.

112. Merrill, in its capacity as Seller under the Sale Agreements, made certain representations and warranties and guarantied ResMAE's representations and warranties under the Purchase Agreement to facilitate the sale of Mortgage Loans to the Trusts in exchange for valid consideration paid. *See* Sale Agreements, Ex. B, § 1.04(b).

113. The rights to enforce the Sale Agreements were assigned to the Trusts for the benefit of the Certificateholders pursuant to Section 2.01 of the PSAs.

114. In repurchase requests submitted on March 16, 2012, March 19, 2012, April 19, 2012, May 4, 2012, and December 14, 2012 (Ex. F), the Trustee, on behalf of the RM4 Trust and at the direction of Certificateholders, notified Merrill pursuant to Section 2.03 of the PSA and Section 1.04(b) of the Sale Agreements of breached representations and warranties with respect to the RM4 Trust's Mortgage Loans and demanded repurchase of the breaching loans.

115. In repurchase requests submitted on March 20, 2012, April 19, 2012, May 4, 2012, May 23, 2012, and December 14, 2012 (Ex. G), the Trustee, on behalf of the RM5 Trust and at the direction of Certificateholders, notified Merrill pursuant to Section 2.03 of the PSA

and Section 1.04(b) of the Sale Agreements of breached representations and warranties with respect to the RM5 Trust's Mortgage Loans and demanded repurchase of the breaching loans.

116. To date, Merrill has failed to cure the breaches of representations and warranties or repurchase the Mortgage Loans identified in the Trustee's repurchase demands, as it is required to do under the PSAs and the Sale Agreements. Merrill's failure to repurchase the breaching loans is a direct violation of Section 1.04(b) of the Sale Agreements.

117. Merrill had notice of additional trust-wide breaches, including the breaches and EPD loans at issue in the ResMAE bankruptcy and loans with payment defaults at each securitization's Closing Date, but failed to repurchase the affected loans upon discovery, to the extent not satisfied by the Bankruptcy Settlement, in violation of Section 2.03 of the PSAs and Section 1.04(b) of the Sale Agreements.

118. Merrill must specifically perform its obligations under the Sale Agreements and must repurchase all Mortgage Loans that breach representations and warranties that materially and adversely affect the value of the Mortgage Loans and the Certificateholders' interests in the Mortgage Loans, both those specifically identified by the Trustee and also all other Mortgage Loans with such breaches. Alternatively, Merrill should be required to pay damages for the losses caused to the Trusts and its Certificateholders by Merrill's breaches of its representations and warranties.

119. Each Plaintiff has performed all of the conditions, covenants, and promises required in accordance with the Sale Agreements.

SECOND CAUSE OF ACTION
Anticipatory Breach of Contract: Repurchase
(Against Merrill)

120. Plaintiffs repeat all the foregoing allegations as though fully set forth herein.

121. This is a claim against Merrill for breach of contract with respect to the Sale Agreements, valid and binding contracts that govern the Trusts.

122. Merrill is a party to the Sale Agreements as Seller.

123. Merrill has repurchase obligations under the Sale Agreements as Seller.

124. Merrill, in its capacity as Seller under the Sale Agreements, made certain representations and warranties and guarantied ResMAE's representations and warranties under the Purchase Agreement to facilitate the sale of Mortgage Loans to the Trusts in exchange for valid consideration paid. *See* Sale Agreements, Ex. B, § 1.04(b).

125. The rights to enforce the Sale Agreements were assigned to the Trusts for the benefit of the Certificateholders pursuant to Section 2.01 of the PSAs.

126. In repurchase demands submitted on December 14, 2012 (Ex. F; Ex. G), the Trustee, on behalf of each RM4 Trust and RM5 Trust and at the direction of Certificateholders, notified Merrill pursuant to Section 2.03 of the PSA and Section 1.04(b) of the Sale Agreements of breached representations and warranties with respect to the Trusts' Mortgage Loans and demanded repurchase of the breaching loans.

127. As the Sponsor, Merrill had independent notice of the breaches identified in the December 14, 2012 repurchase demands, but failed to repurchase the affected loans upon discovery, to the extent not satisfied by the Bankruptcy Settlement, in violation of Section 1.04(b) of the Sale Agreements.

128. The Trustee reasonably expects that Merrill will refuse to repurchase these Mortgage Loans, given its disclaimer of all liability in communication with the Trustee and its prior failures to repurchase. Merrill's failure to repurchase the breaching loans is a direct violation of Section 1.04(b) of the Sale Agreements.

129. Merrill must specifically perform its obligations under the Sale Agreements and must repurchase all Mortgage Loans identified in the December 14, 2012 repurchase demands. Alternatively, Merrill should be required to pay damages for the losses caused to the Trusts and its Certificateholders by Merrill's breaches of its representations and warranties.

130. Each Plaintiff has performed all of the conditions, covenants, and promises required in accordance with the Sale Agreements and the PSAs.

THIRD CAUSE OF ACTION
Breach of Contract: Failure to Notify
(Against Bank of America Itself and as Successor to Wilshire Credit Corporation)

131. Plaintiffs repeat all the foregoing allegations as though fully set forth herein.

132. The PSA for each Trust is a valid and binding contract.

133. Section 2.03(c) of the PSAs required the Servicer to give prompt written notice to the Trusts upon discovery that any Mortgage Loan breached representations and warranties.

134. On information and belief, the initial Servicer, Wilshire, and the current Servicer, Bank of America, likely knew that Mortgage Loans in both Trusts breached representations and warranties that are material and adverse to the value of the Mortgage Loans and to the interests of the Certificateholders therein, but failed to notify the Trustee. To the extent they were aware of breaches of representations and warranties, their failure to notify breached their obligations under § 2.03(c) of the PSAs.

135. Each Trust has been damaged by the failure of Wilshire and Bank of America as Servicer to notify the Trustee or its predecessors of breaches of representations and warranties that they were likely aware of. Bank of America as Servicer must specifically perform its obligations under the PSAs and give prompt written notice to each Trust of breaches already discovered and those that will be discovered in the future.

136. Bank of America as Servicer, on its own behalf, and as successor-in-interest to Wilshire, must also pay the Trusts damages caused by the failure of Wilshire and Bank of America to notify the Trustee of any breaches of representations and warranties.

137. Each Plaintiff has performed all of the conditions, covenants, and promises required in accordance with the PSAs.

FOURTH CAUSE OF ACTION
Indemnification: Failure to Notify
(Against Bank of America Itself and as Successor to Wilshire Credit Corporation)

138. Plaintiffs repeat all the foregoing allegations as though fully set forth herein.

139. The PSA for each Trust is a valid and binding contract.

140. Wilshire and Bank of America as Servicer failed to notify the Trustee of breaches of representations and warranties likely discovered during servicing of the loans, in violation of Section 2.03 of the PSAs.

141. The Trusts and the Trustee have been damaged by the failure of Wilshire and Bank of America as Servicer to notify the Trustee of breaches of representations and warranties that they were likely aware of.

142. Under Section 3.25 of the PSAs, the Servicer must "indemnify . . . the Trustee (in its individual capacity and in its capacity as trustee) . . . and [its] officers, directors, employees and agents and hold each of them harmless against any and all claims, losses, damages, penalties, fines, forfeitures, reasonable and necessary legal fees and related costs, judgments, and any other costs, fees and expenses that any of such parties may sustain in any way related to the failure of the Servicer to perform its duties and service the Mortgage Loans in compliance with the terms of this Agreement by reason of negligence, willful misfeasance or bad faith in the performance of its duties or by reason of reckless disregard of obligations and duties hereunder."

143. Bank of America as Servicer, on its own behalf, and as successor-in-interest to Wilshire, must indemnify the Trusts and the Trustee for any losses suffered as a result of the failure of Wilshire and Bank of America as Servicer to notify, including losses related to the loan file review.

144. Each Plaintiff has performed all of the conditions, covenants, and promises required in accordance with the PSAs.

FIFTH CAUSE OF ACTION
Declaratory Judgment: Void Release
(Against Merrill)

145. Plaintiffs repeat all the foregoing allegations as though fully set forth herein.

146. This is a claim against Merrill for declaratory judgment with respect to the Sale Agreements and PSAs, valid and binding contracts that govern the Trusts.

147. Merrill has repurchase obligations under the Sale Agreements as Seller.

148. Merrill has informed the Trustee that it has no obligations to the Trusts because all such obligations have been released by the Allocation Agreement between the Successor Trustee, Bank of America and Merrill.

149. Consequently, there exists a real and justiciable controversy as to the rights and legal relations of the parties under the PSAs and Sale Agreements.

150. Pursuant to CPLR § 3001, Plaintiffs request a declaration that the Allocation Agreement did not release any of the Trusts' repurchase claims against Merrill.

151. In the alternative, if any of the Trusts' repurchase claims against Merrill were released in the Allocation Agreement, Plaintiffs request a declaration that the release of claims against Merrill in the Allocation Agreement is void.

152. The release is a product of self-dealing because Bank of America as Successor Trustee willfully released the Trusts' claims against its affiliate or incipient affiliate Merrill.

Bank of America did not seek approval for its supposed release from Certificateholders, the bankruptcy court, or any other legal tribunal. Having granted the release unilaterally, and without obtaining adequate consideration for the Trusts, Bank of America effectively amended the Sale Agreements and the PSAs to eliminate its affiliate's repurchase obligations, in violation of Section 2.03 of the Sale Agreements and Section 10.01 of the PSAs, which require consent of Certificateholders representing 66 2/3% of the Voting Rights.

153. In addition, Section 2.06 of the PSAs requires the Trustee to "hold the Trust Fund and exercise the rights referred to above for the benefit of all present and future Holders of the Certificates and to perform its duties set forth in this Agreement in accordance with the provisions hereof." This supposed release of claims against Merrill would substantially reduce the value of the Certificates and prejudice the Trusts and Certificateholders by limiting the contractual remedies available to them to the detriment of Certificateholders. Accordingly, this release is void.

154. In the alternative, if the release is not void and if it extends to claims against Merrill, the release is limited to EPD and other breach claims submitted to ResMAE prior to bankruptcy that were expressly at issue in the ResMAE bankruptcy. The Trusts' current breach claims against Merrill have never been released.

SIXTH CAUSE OF ACTION
(In the Alternative)
Breach of Contract: Unauthorized Modification
(Against Bank of America)

155. Plaintiffs repeat all the foregoing allegations as though fully set forth herein.

156. The PSA and the Sale Agreement for each Trust are valid and binding contracts.

157. Section 2.03 of the Sale Agreements required the Trustee to obtain consent of holders of 66 2/3% of the Voting Rights to "chang[e] in any manner or eliminat[e] any of the provisions" of the agreement or "modify[] in any manner the rights of the Holders."

158. Section 10.01 of the PSAs likewise required the Trustee to obtain 66 2/3% of the Voting Rights for such an amendment. The PSAs also require 66 2/3% of the Voting Rights of any class that is adversely affected.

159. If Bank of America as Successor Trustee, without obtaining adequate consideration for the Trusts, providing notice to Certificateholders, or obtaining Certificateholder or court approval, released the Trusts' claims against Merrill in the Allocation Agreement, Bank of America as Successor Trustee is liable to the Trusts for damages. Without taking any such steps, Bank of America as Successor Trustee unilaterally modified the Sale Agreements and the PSAs to eliminate the Trusts' repurchase rights against Merrill in violation of the Sale Agreements and the PSAs. Accordingly, Bank of America must compensate the Trusts for resulting losses.

SEVENTH CAUSE OF ACTION
(In the Alternative)
Breach of Contract: Failure to Administer the Trusts for Benefit of Certificateholders
(Against Bank of America)

160. Plaintiffs repeat all the foregoing allegations as though fully set forth herein.

161. The PSA for each Trust is a valid and binding contract.

162. Section 2.06 of the PSAs requires the Trustee to "hold the Trust Fund and exercise the rights referred to above for the benefit of all present and future Holders of the Certificates and to perform its duties set forth in this Agreement in accordance with the provisions hereof."

163. If Bank of America as Successor Trustee released the Trusts' claims against Merrill in the Allocation Agreement, should the Court so find, Bank of America as Successor Trustee substantially reduced the value of the Trusts' assets and limited the contractual remedies available to the Trusts and their Certificateholders. Thus, Bank of America as Successor Trustee failed to exercise the rights "for the benefit of all present and future Holders of the Certificates," in violation of Section 2.06 of the PSAs. Accordingly, Bank of America must compensate the Trusts for resulting losses.

PRAYER FOR RELIEF

WHEREFORE each Plaintiff prays for relief as follows:

a) An order of specific performance that Merrill comply with its contractual obligations under the Sale Agreements to repurchase specific Mortgage Loans identified by the Trusts, as well as any other Mortgage Loans that breach representations and warranties.

b) An award of damages compensating for the Trusts' losses relating to the failure of Wilshire and Bank of America as Servicer to notify the Trustee of their breaches of representations and warranties relating to the Mortgage Loans.

c) An award from Bank of America sufficient to indemnify the Trusts and the Trustee pursuant to Section 3.25 of the PSAs for all losses, costs, fees and expenses related to the failure of Wilshire and Bank of America to perform their duties as Servicer, in each case as relating to or arising from the matters pleaded herein.

d) A declaratory judgment that any release of claims against Merrill in the Allocation Agreement is void.

e) Alternatively, an award of damages from Merrill compensating for the Trusts' losses relating to all Mortgage Loans for which Merrill's and ResMAE's representations and warranties have been breached.

f) Alternatively, an award of damages compensating for the Trusts' losses relating to release by Bank of America as Successor Trustee of the Trusts' claims against Merrill.

g) Prejudgment interest, as approved by the Court.

h) An award of such other and further relief as may be just and proper.

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