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

WALNUT PLACE LLC; WALNUT PLACE II LLC; WALNUT PLACE III LLC; WALNUT PLACE IV LLC; WALNUT PLACE V LLC; WALNUT PLACE VI LLC; WALNUT PLACE VII LLC; WALNUT PLACE VIII LLC; WALNUT PLACE IX LLC; WALNUT PLACE X LLC; and WALNUT PLACE XI LLC, derivatively on behalf of Alternative Loan Trust 2006-OA10,

Plaintiffs,

-against-

COUNTRYWIDE HOME LOANS, INC.; PARK GRANADA LLC; PARK MONACO INC; PARK SIENNA LLC; and BANK OF AMERICA CORPORATION,

Defendants,

-and-

THE BANK OF NEW YORK MELLON, in its capacity as Trustee of Alternative Loan Trust 2006-OA10,

Nominal Defendant.

Index No. ____________

SUMMONS

Pursuant to CPLR § 503, the basis of venue is that plaintiffs designated New York County.

To the above-named defendants:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiffs' attorneys, at the address stated below, an answer to the attached complaint within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons was not personally delivered to you within the State of

New York; upon failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

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Dated: New York, New York
February 23, 2011

SUPREME COURT OF THE STATE OF NEW YORK
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WALNUT PLACE LLC; WALNUT PLACE II LLC; WALNUT PLACE III LLC; WALNUT PLACE IV LLC; WALNUT PLACE V LLC; WALNUT PLACE VI LLC; WALNUT PLACE VII LLC; WALNUT PLACE VIII LLC; WALNUT PLACE IX LLC; WALNUT PLACE X LLC; and WALNUT PLACE XI LLC, derivatively on behalf of Alternative Loan Trust 2006-OA10, Plaintiffs, -against- COUNTRYWIDE HOME LOANS, INC.; PARK GRANADA LLC; PARK MONACO INC; PARK SIENNA LLC; and BANK OF AMERICA CORPORATION, Defendants, -and- THE BANK OF NEW YORK MELLON, in its capacity as Trustee of Alternative Loan Trust 2006-OA10, Nominal Defendant.	Index No. ___________ **COMPLAINT**

1. This is a derivative action for breach of a Pooling and Servicing Agreement (PSA) under which defendant Countrywide Home Loans, Inc. and some of its affiliates sold residential mortgage loans to a securitization trust, Alternative Loan Trust 2006-OA10. The Trust financed the purchase of loans by issuing certificates that were to be repaid, with interest, from the cash flow generated by the mortgage loans. Plaintiffs are the holders of $108,084,000 original face amount of certificates in class 1-A-2 of the Trust, $74,075,000 original face amount

of certificates in class 2-A-1 of the Trust, $10,100,000 original face amount of certificates in class 3-A-1 of the Trust, $210,000,000 original face amount of certificates in class 4-A-1 of the Trust, $302,222,000 original face amount of certificates in class 4-A-2 of the Trust, and $360,279,000 of certificates in class XNB of the Trust. The Bank of New York Mellon is the Trustee of the Trust. In the PSA, Countrywide Home Loans made numerous representations and warranties about the mortgage loans. Countrywide Home Loans breached at least five of those representations and warranties. For instance, Countrywide Home Loans represented and warranted that no loan had a loan-to-value ratio of more than 95%, but, in fact, at least 413 mortgage loans had loan-to-value ratios of more than 95%. Countrywide Home Loans also represented that the mortgage loans were originated in accordance with their underwriting guidelines, but, in fact, at least 1,190 mortgage loans did not comply with the underwriting guidelines. Each of these breaches of representations and warranties materially and adversely affected the interests of both the Trust and Plaintiffs in those mortgage loans.

2. The Trust owned 6,531 mortgage loans as of June 30, 2006, the closing date of the PSA. Plaintiffs selected 2,166 of those 6,531 mortgage loans that were delinquent or on which the borrower had defaulted and investigated the true condition of those mortgage loans. The investigation showed that Countrywide Home Loans made false representations and warranties about at least 1,432 (or nearly 66%) of the 2,166 mortgage loans that Plaintiffs investigated. Plaintiffs are informed and believe that discovery will yield evidence that the defendants made similar misrepresentations and breached similar warranties about many of the 4,365 mortgage loans that Plaintiffs have not yet investigated.

3. Under the PSA, the defendants are required to repurchase each loan about which a representation and warranty by Countrywide Home Loans was untrue. On August 3, 2010,

Plaintiffs informed the Trustee of the breaches of representations and warranties and demanded that the defendants repurchase the loans. On August 31, 2010, the Trustee sent the repurchase demand to the defendants. The defendants have refused to repurchase the loans despite having received the demand from the Trustee. Moreover, The Bank of New York Mellon, as trustee, has unreasonably failed to sue the defendants to enforce their obligation to repurchase these loans. Plaintiffs are therefore suing derivatively on behalf of the Trust in order to compel the defendants to repurchase these loans.

PARTIES

4. Each of the Walnut Place entities is a limited liability company organized under the laws of Delaware. Each Walnut Place LLC owns an interest in certificates in the Trust worth at least $10,000,000. Collectively the Walnut Place LLCs own more than 25% of the Certificate Balances of all of the Certificates in the Trust. In this complaint, the Walnut Place LLCs and their predecessors in interest are referred to collectively as Plaintiffs.

5. Defendant Countrywide Home Loans, Inc. is a corporation organized under the laws of New York.

6. Defendant Park Granada LLC is a Delaware limited liability company. On information and belief, Park Granada is an affiliate of Countrywide Home Loans.

7. Defendant Park Monaco Inc. is a Delaware corporation. On information and belief, Park Monaco is an affiliate of Countrywide Home Loans.

8. Defendant Park Sienna LLC is a Delaware limited liability company. On information and belief, Park Sienna is an affiliate of Countrywide Home Loans.

9. Defendant Bank of America Corporation (referred to as **BAC**) is a corporation organized under the laws of Delaware and owns numerous subsidiaries, which will be referred to

collectively as **Bank of America**. As alleged below, BAC is liable to Plaintiffs as the successor to Countrywide Home Loans, Park Granada, Park Monaco, and Park Sienna.

10. The nominal defendant, The Bank of New York Mellon, is a bank organized under the laws of New York. Plaintiffs have sued BNYM as a nominal defendant because BNYM is the trustee of the Trust, and Plaintiffs are suing derivatively to enforce the rights of the trust on behalf of themselves and all other certificateholders.

SECURITIZATION OF MORTGAGE LOANS

11. The certificates that Plaintiffs own are **mortgage-backed securities,** created in a process known as **securitization.** Securitization begins with loans (such as loans secured by mortgages on residential properties) on which the borrowers are obligated to make payments, usually monthly. The entity that makes the loans is known as the **originator** of the loans. The process by which the originator decides whether to make particular loans is known as the **underwriting** of loans. The purpose of underwriting is to ensure that loans are made only to borrowers of sufficient credit standing to repay them, and that the loans are made only against sufficient collateral. In the loan underwriting process, the originator applies its **underwriting standards.** Until the loans are securitized, the borrowers make their loan payments to the originators. Collectively, the payments on the loans are known as the **cash flow** from the loans.

12. In a securitization, a large number of loans, usually of a similar type, are grouped into a **collateral pool.** The originator of those loans sells them (and with them the right to receive the cash flow from them) to a special-purpose entity known as a **depositor**, which in turns sells the mortgage loans to a **trust.** The trust pays the originator cash for the loans. The trust raises the cash to pay for the loans by selling **bonds,** usually called **certificates,** to investors such as Plaintiffs or their predecessors in interest. Each certificate entitles its holder to an agreed part of the cash flow from the loans in the collateral pool.

13. Because the cash flow from the loans in the collateral pool of a securitization is the source of funds to pay the holders of the certificates issued by the trust, the credit quality of those certificates is dependent upon the credit quality of the loans in the collateral pool. The most important information about the credit quality of those loans is contained in the files that the originator develops while making the loans, the so-called loan files. For residential mortgage loans, each loan file normally contains comprehensive information from such important documents as the borrower's application for the loan, credit reports on the borrower, and an appraisal of the property that will secure the loan. The loan file also includes notes from the person who underwrote the loan about whether and how the loan complied with the originator's underwriting standards, including documentation of any "compensating factors" that justified departure from those standards. To ensure that the credit quality of the loans in the collateral pool is as the parties agreed, the originator or other seller of the loans to the trust makes detailed **representations and warranties** about the loans, including many characteristics of the loans relevant to their credit quality, to the trustee for the benefit of the trust and purchasers of certificates from the trust.

THE POOLING AND SERVICING AGREEMENT

14. The Pooling and Servicing Agreement, or PSA, for the Trust was dated June 1, 2006. The closing date for the securitization provided by the PSA was June 30, 2006. A true copy of the PSA is attached to this Complaint as Exhibit 1.

15. The Prospectus Supplement for the Trust as filed with the SEC was dated June 29, 2006. A true copy of the Prospectus Supplement is attached to this Complaint as Exhibit 2.

16. Defendant Countrywide Home Loans was the originator of the loans in the trust. Defendants Park Monaco, Park Granada, and Park Sienna are affiliates of Countrywide Home Loans that owned loans that Countrywide Home Loans had originated. Countrywide Home

Loans and these affiliates sold loans to CWALT, Inc., the depositor of the Trust, and CWALT, Inc. then sold the loans to the Trust. In Schedule III-A of the PSA, Countrywide Home Loans made many representations and warranties about the loans.

17. In Schedule III-A, Countrywide Home Loans represented and warranted that the "information set forth on Schedule I to the Pooling and Servicing Agreement with respect to each Mortgage Loan is true and correct in all material respects as of the Closing Date." PSA § 2.03 & Schedule III-A (1). Schedule I to the Pooling and Servicing Agreement describes, among other things, the loan-to-value ratio at origination of the loan.

18. Countrywide Home Loans also represented and warranted that "[n]o Mortgage Loan had a Loan-to-Value Ratio at origination in excess of 95.00%." PSA § 2.03 & Schedule III-A (3).

19. Countrywide Home Loans also represented and warranted that "[a]ll of the Mortgage Loans were underwritten in all material respects in accordance with Countrywide's underwriting guidelines as set forth in the Prospectus Supplement." PSA § 2.03 & Schedule III-A (37).

20. Countrywide Home Loans also represented and warranted that (except with respect to some loans originated under its Streamlined Documentation program) "prior to the approval of the Mortgage Loan application, an appraisal of the related Mortgaged Property was obtained from a qualified appraiser, duly appointed by the originator, who had no interest, direct or indirect, in the Mortgaged Property or in any loan made on the security thereof, and whose compensation is not affected by the approval or disapproval of the Mortgage Loan; such appraisal is in a form acceptable to FNMA and FHLMC." PSA § 2.03 & Schedule III-A (38).

21. Countrywide Home Loans also represented and warranted that the "Mortgage Loans, individually and in the aggregate, conform in all material respects to the descriptions thereof in the Prospectus Supplement." PSA § 2.03 & Schedule III-A (44). The prospectus supplement contains tables that described the LTVs and the occupancy status of the mortgage loans as of the cut-off date.

EVIDENCE OF BREACHES BASED ON PLAINTIFFS' INVESTIGATION

22. Because the mortgage loans in the Trust have experienced a high number of defaults, Plaintiffs conducted an investigation to determine whether the loans were accurately described when they were sold to the Trust. This investigation demonstrated that many of the loans breached one or more of the five representations and warranties described above.

A. Breach of Schedule III-A (1)

23. In Schedule III-A, Countrywide Home Loans represented and warranted that the "information set forth on Schedule I to the Pooling and Servicing Agreement with respect to each Mortgage Loan is true and correct in all material respects as of the Closing Date." PSA § 2.03 & Schedule III-A (1). Schedule I to the Pooling and Servicing Agreement describes, among other things, the loan-to-value ratio, or LTV, at origination of the loan.

24. LTV is the ratio of the amount of money borrowed by the borrower to the value of the property mortgaged to provide security to the lender. For example, if a borrower borrowed $300,000 and gave a mortgage on property valued at $500,000, then the LTV would be 60%.

25. LTV is one of the most crucial measures of the risk of a mortgage loan. LTV is a primary determinant of the likelihood of default. The lower the LTV, the lower the likelihood of default. For example, the lower the LTV, the less likely it is that a decline in the value of the property will wipe out the owner's equity, and thereby give the owner an incentive to stop making mortgage payments and abandon the property, a so-called strategic default. LTV also

determines the severity of losses for those loans that do default. The lower the LTV, the lower the severity of losses on those loans that do default. Loans with lower LTVs provide greater "cushion," thereby increasing the likelihood that the proceeds of foreclosure will cover the unpaid balance of the mortgage loan.

26. For each of these reasons, an LTV that is reported as lower than its true value materially and adversely affects the interests of both the Trust and the Certificateholders in that mortgage loan.

27. An accurate denominator (that is, the value of the property) is essential to an accurate LTV. In particular, if the denominator is too high, then the risk of the loan will be understated, sometimes greatly understated. To use the example in paragraph 24, if the property's actual value is $500,000, but it is incorrectly valued at $550,000, then the ostensible LTV of the loan would be 54.5%, not 60%, and thus the loan appears less risky than it actually is.

28. Plaintiffs' investigation showed that the true values of the properties that secured the loans in the trust were inaccurate by using an automated valuation model, or AVM, and by looking at subsequent sales of properties that were included in the trust.

1. Automated Valuation Model

29. Using a comprehensive, industry-standard AVM, Plaintiffs determined the true market value of many of the properties that secured loans in the Trust, as of the origination date of each loan. An AVM considers objective criteria like the condition of the property and the actual sale prices of comparable properties in the same locale shortly before the specified date and is more consistent, independent, and objective than other methods of appraisal. AVMs have been in widespread use for many years. The AVM used by Plaintiffs incorporates a database of 500 million sales covering zip codes that represent more than 97% of the homes, occupied by

more than 99% of the population, in the United States. Independent testing services have determined that this AVM is the most accurate of all such models.

30. There was sufficient information to determine the value of 1,574 of the properties that secured loans, and thereby to calculate the correct LTV of each of those loans, as of the date on which each loan was made. On 1,134 of those 1,574 properties, the AVM reported that the appraised value in Schedule I of the PSA was 105% or more of the true market value as determined by the model, and the amount by which the stated values of those properties exceeded their true market values in the aggregate was $119,440,958. The AVM reported that the appraised value in Schedule I of the PSA was 95% or less of the true market value on only 101 properties, and the amount by which the true market values of those properties exceeded the reported values was $9,368,841. Thus, the number of properties on which the value was overstated exceeded by more than 11 times the number on which the value was understated, and the aggregate amount overstated was nearly 13 times the aggregate amount understated. Details of the AVM results for each loan on which the appraised value was more than 105% of the value determined by the model are given in Table 1 of Exhibit 3.

2. Subsequent Sales of Refinanced Properties

31. Some of the loans in the trust were taken out to refinance existing mortgages, rather than to purchase properties. For those loans, the value of the property was based solely on the appraised value rather than a sale price because there is no sale price in a refinancing. Of the loans secured by refinanced properties that Plaintiffs investigated, 151 sold for much less than the appraised value of the property reported in the Schedule, even when adjusted for declines in the housing price index, resulting in a loss to the trust. Details of this analysis are given in Table 2 of Exhibit 3.

*

32. With respect to 1,134 mortgage loans, the reported appraised value of the property was significantly higher than the actual value of the property, as shown by the AVM. Because the appraised value is used as the denominator in the LTV, this evidence shows that the reported LTV in Schedule I of the PSA was materially incorrect for these 1,134 mortgage loans. With respect to 151 refinanced mortgage loans, the subsequent sale information for these loans also shows that the reported appraised value of the property was incorrect. These 151 mortgage loans also had incorrect LTVs. Eliminating duplicates, 1,180 mortgage loans had incorrect LTVs.

33. Each of these differences is material and is a breach of the warranty in Schedule III-A (1) that the "information set forth on Schedule I to the Pooling and Servicing Agreement with respect to each Mortgage Loan is true and correct in all material respects as of the Closing Date."

B. Breach of Schedule III-A (3)

34. Countrywide Home Loans represented and warranted that "[n]o Mortgage Loan had a Loan-to-Value Ratio at origination in excess of 95.00%." PSA § 2.03 & Schedule III-A (3).

35. For many of the mortgage loans, the value determined by the AVM was significantly lower than the actual value of the property, so the actual LTV was higher than the reported LTV because the denominator used to calculate the reported LTV was higher than the true denominator. For 413 mortgage loans, using the true value of the property as determined by the AVM, the actual LTV was more than 95%.

36. Each mortgage loan with an actual LTV of more than 95% breached Schedule III-A (3).

C. Breach of Schedule III-A (37) & (38)

37. Countrywide Home Loans represented and warranted that "[a]ll of the Mortgage Loans were underwritten in all material respects in accordance with Countrywide's underwriting guidelines as set forth in the Prospectus Supplement." PSA § 2.03 & Schedule III-A (37).

38. Countrywide Home Loans also represented and warranted that (except with respect to some loans originated under its Streamlined Documentation program) "prior to the approval of the Mortgage Loan application, an appraisal of the related Mortgaged Property was obtained from a qualified appraiser, duly appointed by the originator, who had no interest, direct or indirect, in the Mortgaged Property or in any loan made on the security thereof, and whose compensation is not affected by the approval or disapproval of the Mortgage Loan; such appraisal is in a form acceptable to FNMA and FHLMC." PSA § 2.03 & Schedule III-A (38).

39. Originators of mortgage loans have written standards for the underwriting of loans. An important purpose of underwriting is to ensure that the originator makes mortgage loans only in compliance with those standards and that its underwriting decisions are properly documented. An even more fundamental purpose of underwriting mortgage loans is to ensure that loans are made only to borrowers with credit standing and financial resources sufficient to repay the loans and only against collateral with value, condition, and marketability sufficient to secure the loans.

40. An originator's underwriting standards, and the extent to which the originator departs from its standards, are important indicators of the risk of mortgage loans made by that originator and of certificates sold in a securitization in which mortgage loans made by that originator are part of the collateral pool. A representation that a mortgage loan was originated in accordance with the originator's underwriting standards when the loan was not originated in

accordance with those standards materially and adversely affects the interests of both the Trust and the Certificateholders in that mortgage loan.

41. Underwriting guidelines usually contain requirements that the property that secures the loan be appraised by an independent appraiser. A representation that a loan was secured by a property appraised by an independent appraiser when the loan was secured by a property appraised by an appraiser who was not independent materially and adversely affects the interests of both the Trust and the Certificateholders in that mortgage loan.

42. The mortgage loans were originated by Countrywide Home Loans. Countrywide Home Loans' underwriting requirements stated that, except with respect to some mortgage loans originated pursuant to its Streamlined Documentation Program, "Countrywide Home Loans obtains appraisals from independent appraisers or appraisal services for properties that are to secure mortgage loans. . . . All appraisals are required to conform to Fannie Mae or Freddie Mac appraisal standards then in effect." Pros. Sup. S-89. Fannie Mae and Freddie Mac appraisal standards require that appraisals be independent, unbiased, and not contingent on a predetermined result. Many of the appraisals, however, were conducted by appraisers who were not independent, and so did not comply with Fannie and Freddie standards.

1. Appraisals were not conducted by independent appraisers.

43. As reported in the 2007 National Appraisal Survey conducted by October Research, around the time of this securitization, brokers and loan officers pressured appraisers by threatening to withhold future assignments if an appraised value was not high enough to enable the transaction to close and sometimes by refusing to pay for completed appraisals that were not high enough. This pressure came in many forms, including the following:

- the withholding of business if the appraisers refused to inflate values;

- the withholding of business if the appraisers refused to guarantee a predetermined value;
- the withholding of business if the appraisers refused to ignore deficiencies in the property;
- the refusal to pay for an appraisal that did not give the brokers and loans officers the property values that they wanted; and
- the black listing of honest appraisers in order to use "rubber stamp" appraisers.

44. Appraisals made under pressure of this kind are breaches of Schedule III-A (37) because such appraisals do not conform to the underwriting requirements of the originator, which require independent, unbiased appraisals that are not contingent on a predetermined result.

45. Appraisals made under pressure of this kind are breaches of Schedule III-A (38) because such appraisals are not independent, unbiased appraisals and do not conform to Fannie Mae and Freddie Mac appraisal standards.

46. As described above, the number of properties on which the value was overstated was more than 11 times the number on which the value was understated, and the aggregate amount overstated was nearly 13 times the aggregate amount understated. This lopsided result demonstrates the upward bias in appraisals of properties that secured the mortgage loans in the Trust.

47. For the 1,134 mortgage loans where the AVM reported a value significantly lower than the reported appraised value and the 151 mortgage loans where the subsequent sale prices show that the initial appraisal was too high, there is strong evidence that the appraisal was biased because the appraisers were not independent. Each such loan breached the representations and warranties in Schedule III-A (37) and (38).

2. Early Payment Defaults

48. When a loan becomes 60 or more days delinquent within six months after it was made it is called an early payment default. An EPD is strong evidence that the loan did not conform to the underwriting standards in making the loan, often by failing to detect fraud in the application. Underwriting standards are intended to ensure that loans are made only to borrowers who can and will make their mortgage payments. Because an EPD occurs so soon after the mortgage loan was made, it is much more likely that the default occurred because the borrower could not afford the payments in the first place (and thus that the underwriting standards were not followed), than because of changed external circumstances unrelated to the underwriting of the mortgage loan (such as that the borrower lost his or her job). Twenty-eight loans in the collateral pool of this securitization experienced EPDs. These 28 loans are identified in Table 3 of Appendix 3.

49. Eliminating duplicates, 1,190 loans did not comply with the stated underwriting guidelines.

3. Additional evidence of undisclosed departures from underwriting standards.

50. In addition to the evidence from the subset of loans that Plaintiffs have investigated, cited above, there is strong evidence from governmental investigations that Countrywide Home Loans made extensive, undisclosed departures from its stated underwriting standards.

51. The Securities and Exchange Commission conducted an extensive investigation of the lending practices of Countrywide. Based on the findings of its investigation, the SEC sued three former senior officers of Countrywide. In its complaint, the SEC alleged that these three senior officers committed securities fraud by hiding from investors "the high percentage of loans

[Countrywide] originated that were outside its already widened underwriting guidelines due to loans made as exceptions to guidelines."

52. A pay-option adjustable-rate mortgage loan (also called an Option ARM) is a mortgage loan where the borrower has the option to make one of three payments, a minimum payment that increases the amount of principal the borrower owns on the mortgage (called negative amortization), an interest-only payment that neither increases or decreases the principal the borrower owns on the mortgage, or a full payment that decreases the amount the borrower owes on the mortgage. At a certain point in the life of an Option ARM, a "reset" occurs and the borrower must always pay the full payment. All of the mortgage loans in this securitization were Option ARMs. At an investor conference in September 2006, Countrywide stated that its underwriting guidelines required that a borrower be able to afford the full payment on the Option ARM.

53. Among the evidence for the SEC's allegations is a memorandum dated December 13, 2007, in which the enterprise risk assessment officer at Countrywide stated that "borrower repayment capacity was not adequately assessed by the bank during the underwriting process for home equity mortgage loans. More specifically, debt-to-income (DTI) ratios did not consider the impact of principal [negative] amortization or an increase in interest [due to a payment reset]."

54. The SEC also based its allegations on an email dated April 4, 2006, in which Countrywide's Chairman and CEO Angelo Mozilo wrote that for Option ARMs "it appears that it is just a matter of time that we will be faced with much higher resets and therefore much higher delinquencies."

55. The SEC also based its allegations on an email dated June 1, 2007, in which Mozilo wrote that borrowers of Option ARMs "are going to experience a payment shock which

is going to be difficult if not impossible for them to manage." The SEC also based its allegations on an email from November 3, 2007, where Mozilo recognized that Countrywide was unable "to properly underwrite" Option ARMs.

56. These facts indicate that Countrywide did not, in fact, underwrite Option ARMs so that borrowers could afford the full payment.

57. The Attorneys General of many states also investigated Countrywide's lending practices. Among these, the Attorney General of California found, and alleged in a suit against Countrywide, that Countrywide "viewed borrowers as nothing more than the means for producing more loans, originating loans with little or no regard to borrowers' long-term ability to afford them." The Attorneys General of several other states also reached the same conclusion.

- The Attorney General of Washington alleged that "[t]o increase market share, [Countrywide] dispensed with many standard underwriting guidelines . . . to place unqualified borrowers in loans which ultimately they could not afford."

- The Attorney General of Illinois alleged in a suit against Countrywide that Countrywide was "indifferen[t] to whether homeowners could afford its loans."

- The Attorney General of West Virginia alleged that "Countrywide sold West Virginia consumers loans when there was no reasonable probability of the consumers being able to pay the loan in full."

58. Countrywide did not adhere to its own underwriting standards, but instead abandoned or ignored them. According to internal Countrywide documents recently made public by the SEC, Mozilo admitted that loans "had been originated 'through our channels with disregard for process [and] compliance with guidelines.'" Similarly, the Attorney General of California alleged that "Countrywide did whatever it took to sell more loans, faster – including by . . . disregarding the minimal underwriting criteria it claimed to require."

59. Countrywide made exceptions to its underwriting standards where no compensating factors existed, resulting in higher rates of default. According to the SEC in its action against former officers of Countrywide:

> [T]he actual underwriting of exceptions was severely compromised. According to Countrywide's official underwriting guidelines, exceptions were only proper where "compensating factors" were identified which offset the risks caused by the loan being outside of guidelines. In practice, however, **Countrywide used as "compensating factors" variables such as FICO and loan to value, which had already been assessed [in determining the loan to be outside of guidelines].**

(Emphasis in original.) Such "compensating factors" did not actually compensate for anything and did not "offset" any risk.

60. Finally, Countrywide did not apply its underwriting standards in accordance with all federal, state, and local laws. Countrywide has entered into agreements to settle charges of violation of predatory lending, unfair competition, false advertising, and banking laws with the Attorneys General of at least 39 states, including Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Maine, Michigan, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The Attorneys General of these states alleged that Countrywide violated state predatory lending laws by (i) making loans it could not have reasonably expected borrowers to be able to repay; (ii) using high pressure sales and advertising tactics designed to steer borrowers towards high-risk loans; and (iii) failing to disclose to borrowers important information about the loans, including the costs and difficulties of refinancing, the availability of lower cost products, the existence and nature of prepayment penalties, and that advertised low interest rates were merely "teaser" rates that would adjust upwards dramatically as soon as one month after closing.

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61. This additional evidence shows that many of the loans already identified did not conform to Countrywide's underwriting standards, and that many more of the 6,531 loans in the trust did not conform to Countrywide's underwriting standards.

D. Breach of Schedule III-A (44)

62. Countrywide represented and warranted that the "Mortgage Loans, individually and in the aggregate, conform in all material respects to the descriptions thereof in the Prospectus Supplement." PSA §2.03 & Schedule III-A (44). The prospectus supplement contains tables that described the LTVs and the occupancy status of the mortgage loans as of the cut-off date. These tables were incorrect because the LTVs of the mortgage loans and the occupancy status of the mortgage loans were incorrect.

1. LTVs

63. With respect to the same 1,180 mortgage loans described above, the LTVs were incorrect. Each mortgage loan that had an incorrect LTV was a breach of Schedule III-A (44).

2. Occupancy Status

64. Residential real estate is usually divided into primary residences, second homes, and investment properties. Mortgages on primary residences are less likely to default than mortgages on non-owner-occupied residences and are therefore less risky.

65. Occupancy status (that is, whether the property that secures the mortgage is to be the primary residence of the borrower, a second home, or an investment property) is an important factor in determining the risk of a mortgage loan. The percentage of loans in the collateral pool of a securitization that are not secured by mortgages on primary residences is an important measure of the risk of certificates sold in that securitization. Other things being equal, the higher the percentage of loans not secured by primary residences, the greater the risk of the certificates.

A representation that the property that secured a mortgage loan was owner occupied when the property was actually not owner occupied materially and adversely affects the interests of both the Trust and the Certificateholders in that mortgage loan.

66. In some states and counties, owners of a property are able to designate whether that property is his or her "homestead," which may reduce the taxes on that property or exempt the property from assets available to satisfy the owner's creditors, or both. An owner may designate only one property, which he or she must occupy, as his or her homestead. Sixteen loans in the Trust that were reported to be owner occupied in Schedule I of the PSA were not actually owner occupied because the borrower designated another property as his or her homestead. These 16 loans are identified in Table 4 of Exhibit 3.

67. The fact that an owner in one of these jurisdictions does not designate a property as his or her homestead when he or she can do so is strong evidence that the property was not his or her primary residence. With respect to 468 of the properties that were stated in Schedule I of the PSA to be owner occupied, the owner could have but did not designate the property as his or her homestead. These 468 loans are identified in Table 4 of Exhibit 3.

68. For 195 properties that secured the mortgage loans, the borrower instructed local tax authorities to send the bills for the taxes on the property to the borrower at an address other than the property itself, even though the property was reported to be owner occupied in the Schedule. Such an instruction is strong evidence that the borrower did not live in the mortgaged property or consider it to be his or her primary residence. These 195 loans are identified in Table 4 of Exhibit 3.

69. With respect to 532 mortgage loans, the occupancy status of the property as reflected in the prospectus supplement was incorrect. With respect to 16 mortgage loans that

were represented to be owner occupied, the borrower actually designated a different property as his or her homestead. With respect to 468 mortgage loans, the borrower could have designated the property as his or her homestead but did not. With respect to 195 mortgage loans that were represented to be owner occupied, the borrower instructed local tax authorities to send the bills for the taxes on the property to the borrower at an address other than the property itself. Each of these criteria indicates that the property was not actually owner occupied.

70. Each incorrect occupancy status was a breach of Schedule III-A (44).

EXAMPLES OF NONCOMPLIANT LOANS

71. By way of illustration, and without limitation, the following paragraphs highlight particular loans that Plaintiffs' investigation showed did not comply with the representations and warranties that Countrywide Home Loans made about them.

72. Loan number 119478315: This loan for $544,000 was secured by a property that had a reported appraised value of $680,000. The AVM determined that the true value of the property was $569,000. Thus the reported LTV was 80%, but the true LTV was 95.6%. This loan defaulted five months after it was originated. This loan therefore breached the following representations and warranties: Schedule II-A (1), (3), (37), (38), and (44).

73. Loan number 119837840: This loan for $1,331,250 was secured by a property that had a reported appraised value of $1,775,000. The AVM determined that the true value of the property was $975,999. Thus the reported LTV was 75%, but the true LTV was 136.5%. The property that secured this loan was represented to be owner occupied, but in fact, another property owned by the same owner was designated as a homestead and the property tax bills were sent to another address. This loan therefore breached the following representations and warranties: Schedule II-A (1), (3), (37), (38), and (44).

74. Loan number 136202091: This loan for $523,500 was secured by a property that had a reported appraised value of $698,000. The AVM determined that the true value of the property was $462,000. Thus the reported LTV was 75%, but the true LTV was 113.3%. After the loan was securitized, the property was sold for only $375,000, even though housing prices in the area the property was located rose by 3% between the date of origination of the loan and the sale. This loan therefore breached the following representations and warranties: Schedule II-A (1), (3), (37), (38), and (44).

75. A list of each loans that the investigation uncovered that breached the representations and warranties is attached as in Exhibit 4.

76. Based on the 1,432 loans that breached the representations and warranties and on the publically available information described in paragraphs 50 through 60, Plaintiffs are informed and believe that many more loans breached the representations and warranties.

COUNTRYWIDE HAS REFUSED TO REPURCHASE THE LOANS.

77. Under section 2.03(c) of the Pooling and Servicing Agreement, each Countrywide defendant agreed that

> within 90 days of the earlier of its discovery or its receipt of written notice from any party of a breach of any representation or warranty with respect to a Mortgage Loan sold by it pursuant to Section 2.03(a) that materially and adversely affects the interests of the Certificateholders in that Mortgage Loan, it shall cure such breach in all material respects, and if such breach is not so cured, shall . . . repurchase the affected Mortgage Loan or Mortgage Loans from the Trustee at the Purchase Price. . . .

78. By letter dated August 3, 2010, Plaintiffs, through their attorneys, sent a letter to BNYM informing it of the breaches of representations and warranties that are described in paragraphs 17 through 21 above. This letter included an appendix that identified all loans identified in Exhibit 4. The letter from Plaintiffs dated August 3, 2010, without its appendices, is attached as Exhibit 5.

79. By letter dated August 31, 2010, BNYM sent the written notice of breaches of representations and warranties to the defendants and others. Thus, on August 31, 2010, or shortly thereafter, the Countrywide defendants received written notice from the Trustee of Countrywide's breaches of representations and warranties with respect to the mortgage loans.

80. Each Countrywide defendant is thus obligated to repurchase the loans it sold identified in Exhibit D that breached the representations and warranties that Countrywide made in the PSA.

81. The ninety-day period prescribed under Section 2.03(c) of the PSA expired on November 29, 2010.

82. The Countrywide defendants have not cured the breaches of representations and warranties or repurchased any of the affected mortgage loans from the Trust.

PLAINTIFFS MAY SUE TO ENFORCE THE PSA.

83. Under the PSA, certificateholders may file a lawsuit if they meet the requirements of the limitation of suits provision. That provision states that certificateholders representing at least 25% of the Voting Rights of Certificates in the Trust must request that the Trustee sue and offer to indemnify the Trustee for the costs, expenses, and liability it incurs in connection with suing. A certificateholder may sue if the Trustee does not file suit within 60 days after receiving the request to sue and the indemnity.

84. On December 23, 2010, certificateholders of more than 25% of the Voting Rights of Certificates in the Trust, including Plaintiffs, made a written request to the Trustee to sue the defendants for breach of their obligations under Section 2.03(c) of the PSA and offered to indemnify the Trustee from loss, including attorneys fees and other expenses of litigation, that may be incurred by the Trustee as a result of following the direction of the certificateholders. This written request is attached as Exhibit 6.

85. More than 60 days have elapsed since Plaintiffs and the other certificateholder sent a written request directing BNYM to file a lawsuit. BNYM has not filed a lawsuit.

86. On February 18, 2011, BNYM, through its attorneys, sent a letter informing Plaintiffs that it did not intend to sue within 60 days of receiving the demand letter dated December 23, 2010.

87. Plaintiffs have satisfied the requirements of the limitation of suits provision of the PSA and are entitled to sue to enforce breaches of the PSA.

88. The PSA authorizes the Trustee to enforce breaches of representations and warranties for the benefit of the Trust.

89. BNYM's refusal to bring a lawsuit was unreasonable because Plaintiffs' investigation has produced specific evidence that gives rise to a strong inference that Countrywide breached its representations and warranties on the 1,432 loans that are the subject of this lawsuit and the other loans in the trust.

90. Because BNYM has unreasonably refused to bring a lawsuit, Plaintiffs bring this action derivatively, in the right and for the benefit of the Certificateholders of the Trust, to redress the defendants' breach of contract.

91. Plaintiffs are Certificateholders. Plaintiffs will fairly and adequately represent the interests of the Trust and the Certificateholders of the Trust in enforcing and prosecuting its rights, and have retained competent counsel experienced in this type of litigation to prosecute this action.

LIABILITY OF DEFENDANTS BANK OF AMERICA CORPORATION AND ITS SUBSIDIARIES AS SUCCESSORS TO COUNTRYWIDE FINANCIAL CORPORATION AND COUNTRYWIDE HOME LOANS

92. At all relevant times, BAC was a public company whose stock was traded on the New York Stock Exchange.

93. Before the merger of Countrywide and BAC described below, Countrywide Financial Corporation (referred to as **Old CFC**) was the publicly-traded parent of numerous subsidiaries, including Countrywide Home Loans, CWALT, Park Granada, Park Monaco, and Park Sienna.

94. On January 11, 2008, BAC and Old CFC entered into an Agreement and Plan of Merger (referred to as the **Merger Agreement**) pursuant to which Old CFC would be merged into Red Oak Merger Corporation, a wholly-owned subsidiary of BAC formed to accomplish the merger.

95. Under the Merger Agreement, Old CFC would merge into Red Oak and cease to exist, and Red Oak would continue as the surviving company.

96. Under the Merger Agreement, the shareholders of Old CFC would receive, and ultimately did receive, 0.1822 shares of BAC stock for each share of Old CFC, thereby maintaining those shareholders' ownership interest in the businesses of Old CFC.

97. After the merger, Red Oak was to be renamed Countrywide Financial LLC but was in fact renamed Countrywide Financial Corporation (referred to as **New CFC**).

98. In a Form 8-K filing also dated January 11, 2008, BAC disclosed that the Merger Agreement was between Old CFC and BAC, the public company, not any subsidiary or affiliate of BAC.

99. In a press release accompanying the 8-K, BAC stated that it intended initially to operate Countrywide separately under the Countrywide brand and that integration of Countrywide's operations with the operations of Bank of America would occur in 2009.

100. On February 22, 2008, an article appeared in the periodical *Corporate Counsel* about the litigation that Countrywide then faced and its possible implications for Bank of

America. In the article, a spokesperson for Bank of America acknowledged that Bank of America had "bought the company and all of its assets and liabilities[,] . . . was aware of the claims and potential claims against the company and [had] factored these into the purchase."

101. On May 28, 2008, BAC filed a Form 8-K and issued a press release stating that Bank of America was creating a new banking management structure and that a long-time Bank of America officer would become president of the new consumer real estate operations of "Countrywide Financial Corporation and Bank of America when they are combined." The press release also stated that the president of this new consumer real estate operation would be based in Calabasas, California, the location of Old CFC's principal offices.

102. BAC and Old CFC consummated the merger on July 1, 2008. As a result, Old CFC ceased to exist. By operation of law, as a consequence of the merger, Red Oak (soon thereafter renamed Countrywide Financial Corporation, which is New CFC) assumed the liabilities of Old CFC. In a July 1, 2008 8-K and press release, the president of Bank of America's consumer real estate unit stated that it was now time to "begin to combine the two companies and prepare to introduce our new name and way of operating." The release also noted that the combined entity would be based in Calabasas, California, the former principal offices of Countrywide. Plaintiffs are informed and believe, and based thereon allege, that Bank of America's consumer real estate unit has been and remains housed in the offices formerly occupied by Countrywide, and Bank of America has retained a substantial number of former employees of Countrywide to operate its consumer real estate unit.

103. On October 6, 2008, BAC filed an 8-K announcing, among other things, that New CFC and Countrywide Home Loans would transfer all or substantially all of their assets to unnamed subsidiaries of BAC. Plaintiffs are informed and believe, and based thereon allege, that

the intended effect of this transaction was to integrate further into the operations of Bank of America the assets of Old CFC and Countrywide Home Loans that had been transferred to New CFC in connection with the merger, while leaving liabilities with New CFC and Countrywide Home Loans.

104. On November 7, 2008, BAC filed an 8-K announcing, among other things, that New CFC and Countrywide Home Loans had transferred substantially all of their assets and operations to BAC. Plaintiffs are informed and believe, and based thereon allege, that, primarily as a result of this transfer of assets, New CFC and Countrywide Home Loans are now moribund organizations, with few, if any, assets or operations.

105. Plaintiffs are informed and believe, and based thereon allege, that transferees of New CFC's and Countrywide Home Loans' assets may have included other subsidiaries of BAC rather than, or in addition to, BAC. In either event, the asset sales were orchestrated and controlled by BAC.

106. As part of the consideration for New CFC's and Countrywide Home Loans' assets, BAC assumed debt securities and related guarantees of Countrywide in an aggregate amount of $16.6 billion. BAC assumed much of this debt through the amendment of indenture agreements substituting BAC (but no other Bank of America company) as the issuer and/or guarantor of the securities subject to the indentures.

107. Plaintiffs are informed and believe, and based thereon allege, that the consideration given for New CFC's and Countrywide Home Loans' assets, as dictated by BAC, was not sufficient to satisfy New CFC's and Countrywide Home Loans' liabilities.

108. On April 27, 2009, Bank of America announced the rebranding of Countrywide operations as Bank of America Home Loans. Bank of America stated that the new brand would

represent the combined operations of Bank of America's mortgage and home equity business and Countrywide Home Loans.

109. By the transactions described above, BAC has moved Old CFC's and Countrywide Home Loans' businesses out of Old CFC and Countrywide Home Loans, combined them with its own business operations, and proceeded to operate them.

110. Bank of America operates its combined consumer real estate unit out of what was Old CFC's and Countrywide Home Loans' headquarters. The Plaintiffs are informed and believe, and based thereon allege, that Bank of America employs many former employees of Countrywide to operate this combined unit.

111. Plaintiffs are informed and believe, and based thereon allege, that Bank of America's rebranded consumer real estate business, Bank of America Home Loans, now operates out of over 1,000 former Countrywide Home Loans offices nationwide.

112. Public statements by Old CFC and BAC reflect that the companies intended that their business operations combine. In its press release announcing the merger, BAC declared that it planned to operate Countrywide Home Loans separately under the Countrywide brand for a limited period only, with integration to occur in 2009. In its 2008 annual report, BAC stated that as a "combined company," Bank of America would be recognized as a responsible lender. Similarly, representatives of Old CFC stated that the "combination" of Countrywide and Bank of America would create one of the most powerful mortgage franchises in the world. On a November 16, 2010, conference call Brian Moynihan, the president and CEO of BAC, stated that Bank of America "would pay for the things that Countrywide did."

113. Because Bank of America continued to operate the businesses of Old CFC and Countrywide Home Loans, it had to assume the liabilities necessary to continue those operations, and Plaintiffs are informed and believe, and based thereon allege, that Bank of America did so.

114. In general, when a corporation sells all or substantially all of its assets to another, the liabilities of the seller do not pass to the asset purchaser unless they are part of the bargained-for exchange between the parties. There are, however, a number of doctrines of successor liability that create exceptions to this general rule. The relevant facts, as alleged herein, show that as a result of the circumstances surrounding the purchase and sale of New CFC and Countrywide Home Loans assets, BAC and its unnamed subsidiaries are liable to Plaintiffs because they are the successors to the liabilities of Old CFC and Countrywide Home Loans that were transferred to New CFC by virtue of the Bank of America/Countrywide merger.

CLAIM FOR RELIEF: BREACH OF CONTRACT

115. Plaintiffs incorporate in this paragraph by reference, as though fully set forth, paragraphs 1 through 114.

116. The PSA is a valid contract.

117. In the PSA, and for valuable consideration, Countrywide Home Loans made to the Trust representations and warranties about each of the mortgage loans that the Trust purchased from CWALT.

118. At least 1,432 of the loans that the Trust purchased breached the representations and warranties that Countrywide made about those loans.

119. Under the PSA, the Countrywide defendants must repurchase the loans. The Countrywide defendants have not repurchased the loans and have breached the PSA.

120. Countrywide's failure to repurchase the loans has caused damages to the Trust and to the certificateholders, including Plaintiffs.

DEMAND FOR RELIEF

Therefore, Plaintiffs demand judgment against the defendants Countrywide Home Loans, Inc., Park Granada, Park Monaco, and Park Sienna, and their successor Bank of America Corporation, for specific performance of their obligation under Section 2.03(c) of the PSA with respect to the loans identified in Exhibit 3 to this Complaint, and with respect to all other loans in the Trust as to which the defendants breached one or more of their representations and warranties under the PSA, or in the alternative, for damages in an amount to be determined at trial, with interest. Plaintiffs also demand an award of the costs and expenses of maintaining this action on behalf of the Trust, including reasonable attorneys and expert fees.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury.

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