IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, Plaintiff, v. IMPAC FUNDING CORPORATION; IMPAC SECURED ASSETS CORP.; J.P. MORGAN SECURITIES LLC; RICHARD J. JOHNSON; and JOSEPH R. TOMKINSON, Defendants.	Civil Action No. **COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff Massachusetts Mutual Life Insurance Company ("MassMutual"), by and through its attorneys, brings this action against Impac Funding Corporation and Impac Secured Assets Corp. (collectively, "Impac" or the "Impac Defendants"); J.P. Morgan Securities LLC (the "Underwriter"); and Richard J. Johnson and Joseph R. Tomkinson (collectively, the "Officer Defendants"), and alleges as follows:

NATURE OF ACTION

1. This action arises out of the sale of certain residential mortgage-backed securities (the "Certificates") to MassMutual. The Certificates were sold pursuant to public filings and offering materials that contained untrue statements and omissions of material facts in violation of the Massachusetts Uniform Securities Act, Mass. Gen. Laws ch. 110A, § 410.

2. Impac Mortgage Holdings, Inc. ("Impac Mortgage") was a mortgage real estate investment trust that acquired, originated, invested in, and sold primarily non-conforming Alt-A residential mortgage loans. These loans did not qualify for purchase by the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac").

3. Impac Mortgage's wholly owned subsidiary, Impac Funding Corporation ("Impac Funding"), originated the mortgage loans on its own or in cooperation with mortgage bankers and brokers, or acquired the mortgage loans from a network of third-party correspondent lenders. Of the mortgage loans it originated or acquired, Impac Funding sold the high-quality, low-risk loans to Impac Mortgage or an affiliate for investment. It then securitized and sold the lower-quality, higher-risk loans to investors such as MassMutual.

4. In marketing the Certificates to MassMutual, the Impac Defendants and the Underwriter represented that the loans backing the securities were underwritten in accordance with prudent underwriting standards that ensured a borrower could repay the loan. They also

represented that the loans had certain characteristics, including defined loan-to-value ratios and specific owner-occupancy statistics.

5. These representations were material to MassMutual's decision to purchase the Certificates. The Impac Defendants and the Underwriter were the exclusive source of information regarding the loans backing the securities. Unlike these defendants, MassMutual did not have access to loan files. MassMutual depended on these defendants to perform the necessary due diligence to verify that the information presented to it and other investors was true and accurate.

6. In reality, however, the loans backing the Certificates deviated substantially from what was represented to MassMutual. To generate an ever-growing volume of loans to sell to investors, the Impac Defendants abandoned or disregarded underwriting guidelines, often originating or purchasing loans issued to borrowers regardless of ability to repay. The loans were issued on the basis of overstated incomes, inflated appraisals, false verifications of employment, and exceptions to underwriting criteria that had no proper justification.

7. The Certificates that MassMutual purchased now qualify as junk. In both securitizations in which MassMutual purchased Certificates, over 28% of the loans backing the securities have now defaulted, have been foreclosed upon, or are delinquent. A subsequent forensic analysis commissioned by MassMutual has demonstrated that the representations about the loans in both securitizations were materially false. Under the Massachusetts Uniform Securities Act, MassMutual is entitled to rescind its purchase of these securities and/or recover appropriate damages.

PARTIES

A. Plaintiff

8. Plaintiff MassMutual is a Massachusetts mutual life insurance company with its principal place of business in Springfield, Massachusetts. Founded in 1851, MassMutual is a leading, diversified financial services organization providing life insurance, disability income insurance, long-term care insurance, annuities, retirement and income products, investment management, mutual funds, and trust services to individual and institutional customers.

B. Impac Defendants

9. Defendant Impac Funding is a California corporation with its principal place of business in Irvine, California. At all relevant times, Impac Funding was a wholly owned subsidiary of Impac Mortgage, a publicly traded company. Impac Funding was the Sponsor for both securitizations at issue in this action.

10. Defendant Impac Secured Assets Corp. ("Impac Secured") is a California corporation with its principal place of business in Irvine, California. At all relevant times, Impac Secured was a wholly owned subsidiary of Impac Funding. Impac Secured was organized for the sole purpose of securitizing mortgage loans and was the Depositor for both securitizations at issue in this action.

C. Underwriter Defendant

11. Defendant J.P. Morgan Securities LLC is a Delaware limited liability company with its principal place of business in New York, New York. The sole member of J.P. Morgan Securities LLC is J.P. Morgan Broker-Dealer Holdings Inc., which is a Delaware corporation with its principal place of business in New York, New York. J.P. Morgan Securities LLC is the successor-in-interest to J.P. Morgan Securities Inc., which converted to a limited liability

company on or about September 1, 2010. J.P. Morgan Securities Inc. and its successor-in-interest, J.P. Morgan Securities LLC, are referred to herein as "J.P. Morgan Securities."

12. J.P. Morgan Securities is the successor-in-interest to Bear, Stearns & Co. Inc. ("Bear Stearns"), which merged with J.P. Morgan Securities on or about October 1, 2008. Bear Stearns acted as the underwriter for both securitizations at issue in this action. As the underwriter, Bear Stearns was involved in the drafting and dissemination of the offering materials by which the Certificates were sold to the public, including MassMutual.

D. Officer Defendants

13. Defendant Richard J. Johnson is an individual residing in Newport Beach, California. Johnson was, at relevant times, the Executive Vice President and Chief Financial Officer of Impac Mortgage. Johnson was also the Chief Financial Officer, Executive Vice President, and Treasurer of Impac Funding, along with the Chief Financial Officer and Executive Vice President of Impac Secured. Johnson signed registration statements for both securitizations at issue in this action.

14. Defendant Joseph R. Tomkinson is an individual residing in Newport Beach and Laguna Beach, California. Tomkinson was, at relevant times, the Chairman of the Board and Chief Executive Officer of Impac Mortgage. Tomkinson was also the Chairman of the Board and Chief Executive Officer of Impac Funding, along with the Chief Executive Officer of Impac Secured. Tomkinson signed registration statements for both securitizations at issue in this action.

E. Relevant Non-Parties

15. The Certificates for each securitization relevant to this action were issued by a trust established by the Depositor. The two issuing trusts (collectively, the "Trusts") were Impac Secured Assets Trust 2006-1 and Impac Secured Assets Trust 2006-4.

16. At all relevant times, the defendants committed the acts, caused or directed others to commit the acts, or permitted others to commit the acts alleged in this Complaint. Any allegations about acts of corporate defendants means that those acts were committed through their officers, directors, employees, agents, and/or representatives while those individuals were acting within the actual or implied scope of their authority.

JURISDICTION AND VENUE

17. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a), as there is complete diversity of citizenship between the parties, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

18. This Court has personal jurisdiction over the defendants by virtue of their securities sales and/or control over securities sales to MassMutual in Massachusetts.

19. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. § 1391, because substantial events giving rise to this Complaint took place in Massachusetts.

SUBSTANTIVE ALLEGATIONS

20. The Impac Defendants structured both securitizations at issue in this action. During the time that MassMutual purchased the Certificates, the Impac Defendants originated and acquired residential mortgage loans. They then selected the highest-quality, lowest-risk loans for investment by the Impac organization, and securitized and sold the remaining loans, generating immediate revenue for the Impac organization while attempting to transfer the risk of default on the loans to others, including MassMutual.

I. THE MARKET FOR RESIDENTIAL MORTGAGE-BACKED SECURITIES

21. In the 1980's and 1990's, mortgage originators followed a traditional model for originating mortgage loans. Under the traditional model, they either held the mortgage loans

they provided to borrowers through the terms of the loans, or sold the mortgage loans to governmental agencies Fannie Mae and Freddie Mac.

22. Loans held by mortgage originators were typically conservative, first-lien loans to prime borrowers because the originator would profit if the borrower made timely interest and principal payments, but would bear the loss if the borrower defaulted and the property value was insufficient to repay the loan. As a result, the originator had economic incentives to establish the creditworthiness of the borrower and the true value of the underlying property by appraising it fairly before issuing the mortgage loan.

23. Loans sold to Fannie Mae and Freddie Mac were also conservative loans to prime borrowers because the loans had to meet specific guidelines for sale. By law, Fannie Mae and Freddie Mac can purchase only those mortgage loans that conform to certain regulatory guidelines. These loans are known in the industry as conforming loans, and are historically the most conservative loans with the lowest rates of delinquency and default. Mortgage loans that fail to meet the regulatory guidelines are known in the industry as non-conforming loans.

24. In the 1980's and 1990's, Fannie Mae and Freddie Mac securitized the loans they purchased from mortgage originators and sold the securities backed by the loans, referred to as residential mortgage-backed securities, to investors. Investors in these early mortgage-backed securities were provided protections not only because the underlying loans conformed to strict regulatory guidelines, but also because Fannie Mae and Freddie Mac guaranteed that investors would receive timely payments of principal and interest. Because Fannie Mae and Freddie Mac were perceived as being backed by the federal government, investors viewed the guarantees as diminishing credit risk, if not removing it altogether.

25. In the early 2000's, the demand for securities backed by mortgage loans increased. Private financial institutions stepped in to meet the demand by originating an ever-growing number of non-conforming loans, such as loans based on reduced documentation, loans issued to subprime borrowers, and adjustable loans where the interest rate increases after a period of time. These loans were then securitized for sale to private investors. By 2001, $240 billion in residential mortgage-backed securities were issued through private securitizations. By 2006, that amount had increased by almost five times – to $1.033 trillion.

26. The Impac Defendants took advantage of this exploding market for residential mortgage-backed securities by significantly increasing the volume of mortgage loans they originated and securitized. In 2003, Impac Funding originated approximately $9.5 billion of mortgage loans and securitized over $800 million of mortgage loans. In 2004, the volume of mortgage loans that Impac Funding originated more than doubled – to $22.2 billion. At the same time, the volume of mortgage loans that it securitized more than quadrupled – to over $3.7 billion. Impac Funding was then considered the fourth-largest Alt-A mortgage originator and the second-largest company securitizing Alt-A loans in the United States. In 2005, the volume of Impac Funding's loan origination and securitization remained high – at $22.3 billion and $2.5 billion, respectively.

II. <u>THE SECURITIZATION PROCESS</u>

27. To create residential mortgage-backed securities, such as the Certificates purchased by MassMutual, the Impac Defendants and the Underwriter used a process known as mortgage securitization. In a mortgage securitization, mortgage loans are acquired from mortgage originators and pooled together, with securities constituting interests in the cash flow from the mortgage pools then sold to investors. The securities are also referred to as mortgage

pass-through securities because the cash flow from the pool of mortgages is passed through to the securities holders when payments are made by the underlying mortgage borrowers.

28. Each securitization involves several entities that perform distinct tasks. The first step in creating a residential mortgage-backed security, such as the Certificates, is the acquisition by the Depositor of an inventory of mortgage loans from a Sponsor or Seller, which either originates the loans or acquires the loans from other mortgage originators in exchange for cash. The Depositor is often a subsidiary or other affiliate of the Sponsor.

29. The Depositor then securitizes the pool of loans by forming one or more mortgage pools with the inventory of loans, and creating tranches of interests in the mortgage pools with various levels of seniority. Interests in these tranches are then issued by the Depositor (who then serves as the Issuer) through a trust in the form of bonds, or certificates.

30. Each tranche has a different level of purported risk and reward, and, often, a different credit rating. The most senior tranches often receive the highest investment grade rating (triple-A). Junior tranches, which usually have lower ratings, are more exposed to risk, but offer higher potential returns. The most senior tranches of securities will be entitled to payment in full before the junior tranches. Conversely, losses on the underlying loans in the asset pool – whether due to default, delinquency, or otherwise – are allocated first to the most subordinate or junior tranche of securities, then to the tranche above that. This hierarchy in the division of cash flows is referred to as the flow of funds or waterfall.

31. The Depositor works with one or more of the nationally recognized credit-rating agencies to ensure that each tranche of the mortgage-backed securities receives the rating desired by the Depositor. Once the asset pool is securitized, the certificates are issued to one or more Underwriters (typically Wall Street banks), who resell them to investors, such as MassMutual.

32. Because the cash flow from the loans in the mortgage pool of a securitization is the source of funds to pay the holders of the securities issued by the trust, the credit quality of the securities depends primarily on the credit quality of the loans in the mortgage pool, which often includes thousands of loans. Detailed information about the credit quality of the loans is contained in the loan files developed and maintained by the mortgage originators when making the loans. For residential mortgage loans, such as the loans that backed the Certificates purchased by MassMutual, each loan file normally contains documents including the borrower's application for the loan, verification of income, assets, and employment, references, credit reports, and an appraisal of the property that will secure the loan and provide the basis for other measures of credit quality, such as loan-to-value ratios, and occupancy status. The loan file should also include notes from the person who underwrote the loan describing the loan's purported compliance with underwriting guidelines, and documentation of compensating factors that justified any departure from those standards.

33. Investors do not have access to the loan files. Instead, entities such as the Sponsor, Depositor, and Underwriter are responsible for gathering and verifying information about the credit quality and characteristics of the loans that are deposited into the trust, and presenting this information in the registration statements, prospectuses, and prospectus supplements (collectively, the "Offering Materials") prepared for potential investors. This due diligence process is a critical safeguard for investors and a fundamental legal obligation of the Sponsors, Depositor, and Underwriter.

III. MASSMUTUAL'S PURCHASES OF IMPAC CERTIFICATES

34. MassMutual purchased the Certificates between March and November 2006. MassMutual made the following purchases of Certificates, representing a total investment of over $16 million, from the following defendants:

Asset	Full Name of Offering	Purchase Price	Seller Defendants
Impac Secured Assets Corp. Series 2006-1, Class 1A2C	Impac Secured Assets Corp., Mortgage Pass-Through Certificates, Series 2006-1	$15,476,000.00	Impac Funding Corporation (Sponsor) Impac Secured Assets Corp. (Depositor) Bear, Stearns & Co. Inc. (Underwriter)
Impac Secured Assets Corp. Series 2006-4, Class M8	Impac Secured Assets Corp., Mortgage Pass-Through Certificates, Series 2006-4	$1,225,000.00	Impac Funding Corporation (Sponsor) Impac Secured Assets Corp. (Depositor) Bear, Stearns & Co. Inc. (Underwriter)
TOTAL		$16,701,000.00	

IV. DEFENDANTS' DISREGARD AND ABANDONMENT OF UNDERWRITING STANDARDS TO FACILITATE SALE OF LOW-QUALITY LOANS TO INVESTORS

A. Impac's Representations That Underwriting Standards Were Consistently Followed

35. The fundamental basis upon which residential mortgage-backed securities are valued is the ability of the borrowers to repay the principal and interest on the underlying loans and the adequacy of the collateral for those loans. If the borrowers cannot pay, and the collateral is insufficient, the investors incur losses. For this reason, the underwriting standards and

practices of the mortgage originator that issued the loans backing the certificates, and the representations in the Offering Materials regarding those standards, are critically important to the value of the securities, and to investors' decisions to purchase the securities.

36. As the Sponsor of the securitizations at issue, Impac Funding originated the mortgage loans or purchased them from third-party correspondent originators. Each loan was purportedly underwritten according to a set of underwriting guidelines, which are specified criteria that the mortgage loans must meet depending upon the individual loan program and circumstances of each mortgage loan. In general, the underwriting guidelines stipulated what documentation was required to be included in the mortgage loan files for each loan product (which may include, depending upon the loan product, verifications of income, assets, closing funds, and payment histories, among other things) and criteria for eligibility, including tests for debt-to-income ("DTI") and combined loan-to-value ("CLTV") ratios.

37. The Impac Defendants represented to investors, including MassMutual, that the securitized loans were underwritten according to meaningful underwriting standards. As detailed below, for each securitization, the Impac Defendants made specific representations about the originator's underwriting standards and/or Impac Funding's own underwriting standards.

(1) Impac Secured Assets, Series 2006-1

38. For the Series 2006-1 securitization, Impac Funding originated or acquired all the mortgage loans underlying the securitization. The loans were split into two groups, with the Group 1 loans serving as the collateral for the Certificates purchased by MassMutual. The Prospectus Supplement represented that approximately 80.64% of the loans in Group 1 were underwritten in accordance with Impac Funding's Progressive Series Program; approximately 19.36% of the loans were underwritten in accordance with Impac Funding's Progressive Express™ Program; and approximately 7.79% of the loans were acquired by Impac Funding in

bulk purchases from third-party originators that applied underwriting standards similar to Impac Funding's underwriting standards.[1]

39. The Prospectus Supplement promised investors that the underwriting guidelines of the Progressive Series Program and the Progressive Express™ Program were applied to ensure a borrower's ability to repay and the adequacy of the mortgaged property as collateral:

> The underwriting guidelines utilized in the Progressive Series Program, as developed by the Originator, are intended to assess the borrower's ability and willingness to repay the mortgage loan obligation and to assess the adequacy of the mortgaged property as collateral for the mortgage loan.
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> * * *
>
> The concept of the Progressive Express™ Program is to underwrite the loan focusing on the borrower's Credit Score, ability and willingness to repay the mortgage loan obligation, and assess the adequacy of the mortgaged property as collateral for the loan.

40. The Prospectus Supplement also promised investors that any exceptions to the underwriting guidelines of the Progressive Series Program and the Progressive Express™ Program were justified by specific and adequate compensating factors:

> On a case by case basis, the Originator may determine that the prospective mortgagor warrants an exception outside the standard program guidelines. An exception may be allowed if the loan application reflects certain compensating factors, including instances where the prospective mortgagor:
>
> - has demonstrated an ability to save and devote a greater portion of income to basic housing needs;
>
> - may have a potential for increased earnings and advancement because of education or special job training, even if the prospective mortgagor has just entered the job market;

[1] The statistical information included in the Prospectus Supplement for the Series 2006-1 securitization was based on a sample pool of mortgage loans. The Prospectus Supplement represented that the characteristics of the full pool of mortgage loans did not materially differ from the information provided with respect to the sample pool.

- has demonstrated an ability to maintain a debt free position;

- may have short term income that is verifiable but could not be counted as stable income because it does not meet the remaining term requirements; and

- has net worth substantial enough to suggest that repayment of the loan is within the prospective mortgagor's ability.

41. For the Progressive Series Program, the Prospectus Supplement represented that each loan was underwritten with an emphasis on the overall quality of the loan, and less restrictive standards were allowed only when meaningful and sufficient compensating factors existed:

> The Progressive Series Program consists of seven mortgage loan programs. Each program has different credit criteria, reserve requirements, qualifying ratios and loan to value ratio restrictions. Series I is designed for credit history and income requirements typical of "A" credit borrowers. In the event a borrower does not fit the Series I criteria, the borrower's mortgage loan is placed into either Series II, III, III+, IV, V or VI, depending on which series' mortgage loan parameters meets the borrower's unique credit profile. Series II, III, III+, IV, V or VI allow for less restrictive standards because of certain compensating or offsetting factors such as a lower loan to value ratio, verified liquid assets, job stability, pride of ownership and, in the case of refinanced mortgage loans, length of time owning the mortgaged property. . . . Each mortgage loan is individually underwritten with emphasis placed on the overall quality of the mortgage loan.

42. The Prospectus Supplement further represented that the debt-to-income ratios of borrowers under the Progressive Series Program were limited:

> The Progressive Series I, II, III, III+, IV, V and VI Program borrowers are required to have debt service to income ratios within the range of 45% to 60% calculated on the basis of monthly income and depending on the loan to value ratio of the mortgage loan.

43. The Prospectus Supplement promised investors that Impac Funding collected a variety of information from borrowers under the Progressive Series Program, and obtained a credit report on each borrower to verify credit history:

> Each prospective borrower completes a mortgage loan application which includes information with respect to the applicant's liabilities, income, credit history, employment history and personal information. The Originator requires a credit report on each applicant from a credit reporting company. The report typically contains information relating to credit history with local and national merchants and lenders, installment debt payments and any record of defaults, bankruptcies, repossessions or judgments.

44. Finally, the Prospectus Supplement represented that a borrower's employment was always verified, and limitations were placed on borrowers using reduced documentation programs:

> Under all Progressive Series Programs, the Originator or the conduit seller verbally verifies the borrower's employment prior to closing. Credit history, collateral quality and the amount of the down payment are important factors in evaluating a mortgage loan submitted under one of the Reduced Documentation Programs. In addition, in order to qualify for a Reduced Documentation Program, a mortgage loan must conform to certain criteria regarding maximum loan amount, property type and occupancy status.

45. For the Progressive Express™ Program, the Prospectus Supplement represented that borrowers had to meet a minimum credit score, and no exceptions were allowed to the credit score requirement.

46. The Prospectus Supplement also represented that all loans issued under the Progressive Express™ Program had limitations placed on the maximum amount of the loan, the type of mortgaged property, the occupancy of the property, the loan-to-value ratio, and the borrower's credit score:

> Under the Progressive Express™ Program, the Originator underwrites single family dwellings with loan to value ratios at origination of up to 100%. In general, the maximum amount for mortgage loans originated under the Progressive Express Program is $750,000; however, the Originator may approve mortgage loans on a case by case basis where generally the maximum loan amount is up to $1 million, owner occupied, with a minimum credit score of 681. The borrower must disclose employment and assets which both are verified by the Originator, the loan to value must not be greater than 70%, the CLTV must not be greater than 80% and the property must be single family residence, excluding condominiums. For loans that exceed a 97% loan to value ratio to a maximum of a 100% loan to value ratio, (i) such loans must be for purchase transactions only, (ii) the borrower must have a minimum credit score of 700, (iii) the mortgaged property must be an owner occupied, primary residence, (iv) the borrower must state income and assets on the Residential Loan Application and meet a debt ratio not to exceed 50% and (v) such loan must be underwritten utilizing the Impac Direct Access System for Lending (IDASL) automated underwriting system.

(2) Impac Secured Assets, Series 2006-4

47. For the Series 2006-4 securitization, Impac Funding originated or acquired the mortgage loans underlying the securitization. The Prospectus Supplement represented that approximately 80% of the loans were underwritten in accordance with the standards of Impac Funding's Progressive Series Program and Progressive Express™ Program, or acquired in a bulk purchase from a third-party originator with underwriting standards similar to Impac Funding's standards. The Prospectus Supplement also represented that approximately 30% of the mortgage loans were acquired in a bulk purchase from American Home Mortgage Corp. ("American Home"), and approximately 5% of the loans were acquired in a bulk purchase from GMAC Mortgage, LLC.

48. The Prospectus Supplement made specific representations about Impac Funding's Progressive Series Program and Progressive Express™ Program and American Home's underwriting standards.

49. The Prospectus Supplement promised investors that the underwriting guidelines of the Progressive Series Program and the Progressive Express™ Program were applied to ensure a borrower's ability to repay and the adequacy of the mortgaged property as collateral:

> The underwriting guidelines utilized in the Progressive Series Program, as developed by Impac Funding, are intended to assess the borrower's ability and willingness to repay the mortgage loan obligation and to assess the adequacy of the mortgaged property as collateral for the mortgage loan.
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> * * *
>
> The concept of the Progressive Express™ Program is to underwrite the loan focusing on the borrower's Credit Score, ability and willingness to repay the mortgage loan obligation, and assess the adequacy of the mortgaged property as collateral for the loan.

50. The Prospectus Supplement also promised investors that any exceptions to the underwriting guidelines of the Progressive Series Program and the Progressive Express™ Program were justified by specific and adequate compensating factors:

> On a case by case basis, Impac Funding may determine that the prospective mortgagor warrants an exception outside the standard program guidelines. An exception may be allowed if the loan application reflects certain compensating factors, including instances where the prospective mortgagor:
>
> • has demonstrated an ability to save and devote a greater portion of income to basic housing needs;
>
> • may have a potential for increased earnings and advancement because of education or special job training, even if the prospective mortgagor has just entered the job market;
>
> • has demonstrated an ability to maintain a debt free position;
>
> • may have short term income that is verifiable but could not be counted as stable income because it does not meet the remaining term requirements; and

- has net worth substantial enough to suggest that repayment of the loan is within the prospective mortgagor's ability.

51. For the Progressive Series Program, the Prospectus Supplement represented that each loan was underwritten with an emphasis on the overall quality of the loan, and less restrictive standards were allowed only when meaningful and sufficient compensating factors existed:

> The Progressive Series Program consists of seven mortgage loan programs. Each program has different credit criteria, reserve requirements, qualifying ratios and loan to value ratio restrictions. Series I is designed for credit history and income requirements typical of "A" credit borrowers. In the event a borrower does not fit the Series I criteria, the borrower's mortgage loan is placed into either Series II, III, III+, IV, V or VI, depending on which series' mortgage loan parameters meets the borrower's unique credit profile. Series II, III, III+, IV, V or VI allow for less restrictive standards because of certain compensating or offsetting factors such as a lower loan to value ratio, verified liquid assets, job stability, pride of ownership and, in the case of refinanced mortgage loans, length of time owning the mortgaged property. . . . Each mortgage loan is individually underwritten with emphasis placed on the overall quality of the mortgage loan.

52. The Prospectus Supplement further represented that the debt-to-income ratios of borrowers under the Progressive Series Program were limited:

> The Progressive Series I, II, III, III+, IV, V and VI Program borrowers are required to have debt service to income ratios within the range of 45% to 60% calculated on the basis of monthly income and depending on the loan to value ratio of the mortgage loan.

53. The Prospectus Supplement promised investors that Impac Funding collected a variety of information from borrowers under the Progressive Series Program, and obtained a credit report on each borrower to verify credit history:

> Each prospective borrower completes a mortgage loan application which includes information with respect to the applicant's liabilities, income, credit history, employment history and personal information. Impac Funding requires a credit report on each

> applicant from a credit reporting company. The report typically contains information relating to credit history with local and national merchants and lenders, installment debt payments and any record of defaults, bankruptcies, repossessions or judgments.

54. Finally, the Prospectus Supplement represented that a borrower's employment was always verified, and limitations were placed on borrowers using reduced documentation programs:

> Under all Progressive Series Programs, Impac Funding or the conduit seller verbally verifies the borrower's employment prior to closing. Credit history, collateral quality and the amount of the down payment are important factors in evaluating a mortgage loan submitted under one of the Reduced Documentation Programs. In addition, in order to qualify for a Reduced Documentation Program, a mortgage loan must conform to certain criteria regarding maximum loan amount, property type and occupancy status.

55. For the Progressive Express™ Program, the Prospectus Supplement represented that borrowers had to meet a minimum credit score, and no exceptions were allowed to the credit score requirement.

56. The Prospectus Supplement also represented that all loans issued under the Progressive Express™ Program had limitations placed on the maximum amount of the loan, the type of mortgaged property, the occupancy of the property, the loan-to-value ratio, and the borrower's credit score:

> Under the Progressive Express™ Program, Impac Funding underwrites single family dwellings with loan to value ratios at origination of up to 95%. In general, the maximum amount for mortgage loans originated under the Progressive Express Program is $750,000; however, Impac Funding may approve mortgage loans on a case by case basis where generally the maximum loan amount is up to $1 million, owner occupied, with a minimum credit score of 681. The borrower must disclose employment and assets which both are verified by Impac Funding, the loan to value must not be greater than 70%, the CLTV must not be greater than

> 80% and the property must be single family residence, excluding condominiums.

57. For loans originated by American Home, the Prospectus Supplement represented that American Home consistently applied underwriting guidelines, and granted exceptions only when compensating factors were present:

> The mortgage loans have been purchased or originated, underwritten and documented in accordance with the guidelines of Fannie Mae, Freddie Mac, the Federal Housing Administration (FHA), the U.S. Department of Veterans Affairs (VA), the U.S. Department of Agriculture Guaranteed Rural Housing Program (GRH), Ginnie Mae, the underwriting guidelines of specific private investors, and the non-conforming or Alt-A underwriting guidelines established by American Home. . . . American Home's non-conforming underwriting guidelines are similar to those of the government sponsored enterprises Fannie Mae and Freddie Mac, but these loans are "non-conforming" in that they may not conform to the maximum loan amounts and in some cases to the underwriting guidelines of Fannie Mae and Freddie Mac. American Home's underwriting philosophy is to weigh all risk factors inherent in the loan file, giving consideration to the individual transaction, borrower profile, the level of documentation provided and the property used to collateralize the debt. These standards are applied in accordance with applicable federal and state laws and regulations. Exceptions to the underwriting standards may be permitted where compensating factors are present.

58. The Prospectus Supplement represented that, for non-conforming loans, American Home either obtained verification information or required the borrower to have sufficient compensating factors:

> Non-conforming loans are generally documented to the requirements of Fannie Mae and Freddie Mac, in that the borrower provides the same information on the loan application along with documentation to verify the accuracy of the information on the application such as income, assets, other liabilities, etc. Certain non-conforming stated income or stated asset products allow for less verification documentation than Fannie Mae or Freddie Mac require. Certain non-conforming Alt-A products also allow for less verification documentation than Fannie Mae or Freddie Mac require. For these Alt-A products, the borrower may not be

> required to verify employment income, assets required to close or both. For some other Alt-A products, the borrower is not required to provide any information regarding employment income, assets required to close or both. Alt-A products with less verification documentation generally have other compensating factors such as higher credit score or lower loan-to-value requirements.

59. The Prospectus Supplement further represented that American Home underwrote loans based solely on information indicating a borrower's willingness and ability to repay:

> American Home underwrites a borrower's creditworthiness based solely on information that American Home believes is indicative of the applicant's willingness and ability to pay the debt they would be incurring.

60. The Prospectus Supplement also promised investors that American Home closely examined a borrower's credit history, housing payment history, debt-to-income ratio, and credit usage to ensure that only borrowers with the willingness and ability to repay loans received them:

> In addition to reviewing the borrower's credit history and credit score, American Home underwriters closely review the borrower's housing payment history. In addition to the monthly housing expense, the underwriter must evaluate the borrower's ability to manage all recurring payments on all debts, including the monthly housing expense. When evaluating the ratio of all monthly debt payments to the borrower's monthly income (debt-to-income ratio), the underwriter should be aware of the degree and frequency of credit usage and its impact on the borrower's ability to repay the loan. For example, borrowers who lower their total obligations should receive favorable consideration and borrowers with a history of heavy usage and a pattern of slow or late payments should receive less flexibility.

B. Impac's Disregard and Abandonment of Underwriting Standards to Generate a Large Volume of Loans for Securitization and Sale to Investors

61. The Impac Defendants' representations about underwriting practices were false. The securitization process incentivized the Impac Defendants to abandon and disregard

underwriting standards so that they could originate and purchase huge volumes of low-quality loans to securitize.

62. As the private residential mortgage-backed securities market expanded, the traditional "originate to hold" model morphed into the "originate to distribute" model. Under the "originate to distribute" model, mortgage companies, such as the Impac Defendants, did not hold the mortgage loans to maturity. Rather, they attempted to shift the risk of loss to the investors who purchased an interest in the securitized pool of loans.

63. The new distribution model was highly profitable for the Impac Defendants and other mortgage companies. By securitizing and selling mortgage loans to investors, mortgage companies received immediate payment for the loans, shifted the loans off their books, and were able to originate or purchase more loans for securitization. The securitization process enabled the mortgage companies to earn most of their income from transaction and loan-servicing fees. Because the mortgage companies did not have to bear the risk of loss, they had an unchecked incentive to originate more and more loans to feed into the securitization machine.

64. The Attorney General for the Commonwealth of Massachusetts explained this unchecked incentive in her investigation into the subprime mortgage industry:

> Historically, the vast majority of home mortgages were written by banks which held the loans in their own portfolios, knew their borrowers, and earned profit by writing good loans and collecting interest over many years. Those banks had to live with their "bad paper" and thus had a strong incentive to avoid making bad loans. In recent years, however, the mortgage market has been driven and funded by the sale and securitization of the vast majority of loans. Lenders now frequently make mortgage loans with the intention to promptly sell the loan and mortgage to one or more entities. ... The lenders' incentives thus changed from writing good loans to writing a huge volume of loans to re-sell, extracting their profit at the front end, with considerably less regard to the ultimate performance of the loans.

65. Ben Bernanke, Chairman of the Federal Reserve Bank, also explained the incentive to abandon underwriting standards in Congressional testimony:

> When an originator sells a mortgage and its servicing rights, depending on the terms of the sale, much or all of the risks are passed on to the loan purchaser. Thus, originators who sell loans may have less incentive to undertake careful underwriting than if they kept the loans. Moreover, for some originators, fees tied to loan volume made loan sales a higher priority than loan quality. This misalignment of incentives, together with strong investor demand for securities with high yields, contributed to the weakening of underwriting standards.

66. To take advantage of the exploding market for residential mortgage-backed securities, the Impac Defendants abandoned and disregarded underwriting guidelines and failed to conduct adequate due diligence so that they could originate and purchase as many loans as possible for securitization.

67. Unbeknownst to MassMutual, and contrary to the representations in the Offering Materials, the Impac Defendants originated and/or purchased loans that had been issued to borrowers, regardless of their ability to pay. The loans were often issued on the basis of overstated incomes, inflated appraisals, false verifications of employment, or exceptions to underwriting criteria that had no proper justification. The origination practices engaged in by the Impac Defendants and the originators from which they purchased were in blatant disregard of disclosed underwriting standards, and any semblance of reasonable and prudent standards.

C. <u>Widespread Defaults That Confirm the Abandonment and Disregard of Underwriting Standards</u>

68. The poor performance of the mortgage loans underlying the Certificates provides additional evidence that the representations about underwriting practices were false. Even though the Certificates purchased by MassMutual were supposed to be long-term, stable investments, just years after their issuance, a substantially high percentage of the mortgage loans

backing the Certificates have defaulted, have been foreclosed upon, or are delinquent, resulting in massive losses to the Certificateholders, including MassMutual. The following table contains the most recent performance data available for the loan pools:

Transaction	Number of Loans in Pool at Closing	Current Number of Loans in Pool	Number of Loans Liquidated or Foreclosed Upon	Number of Loans in Default or Delinquent	% of Loans Liquidated, Foreclosed Upon, in Default or Delinquent
Impac Secured Assets Corp., Series 2006-1	2,882	855	779	48	28.70%
Impac Secured Assets Corp., Series 2006-4	5,273	1,853	1,430	345	33.66%

69. Not only have the loans backing MassMutual's Certificates experienced extraordinary rates of default, but the Certificates' ratings have also significantly deteriorated. MassMutual's Certificates initially received investment-grade ratings of BBB+ or higher. Because of the high delinquency and default rates on the underlying loans, however, all Certificates have been downgraded, as can be seen in the following table:

Certificate	Original S&P Rating	Current S&P Rating	Original Moody's Rating	Current Moody's Rating
Impac Secured Assets Corp., Series 2006-1, Class 1A2C	AAA	D	Aaa	Caa3
Impac Secured Assets Corp., Series 2006-4, Class M8	BBB+	No Rating[2]	Baa2	No Rating

70. The poor performance of the loan pools and the materially decreased credit ratings of the Certificates have caused a massive decline in the market values of the Certificates. According to the most recent data, the Certificates should be worth approximately $13 million, but their market value is substantially lower – approximately $6 million.

[2] This Certificate has been entirely written off due to losses and has no effective rating.

71. The economic downturn cannot explain the abnormally high percentage of defaults, foreclosures, and delinquencies observed in the loan pools. Loan pools that were properly underwritten and contained loans with the represented characteristics would have experienced substantially fewer payment problems and substantially lower percentages of defaults, foreclosures, and delinquencies. The poor performance of the mortgage loans underlying MassMutual's Certificates is itself evidence (confirmed by the analyses below) that the loans were improperly underwritten, and that the representations about origination and underwriting practices were false.

V. MISREPRESENTATIONS ABOUT APPRAISALS AND LOAN-TO-VALUE RATIOS REVEALED BY A FORENSIC REVIEW OF THE MORTGAGE LOANS

A. Appraisal and LTV Testing

72. MassMutual commissioned a forensic review of the mortgage loans underlying the Certificates to determine whether the characteristics of the mortgage loans, as represented in the Offering Materials, were accurate.

73. As part of the forensic review, data relating to the collateral loans underlying each of the securitizations was gathered from multiple public sources, including assessor, DMV, credit, and tax records, as well as proprietary sources such as loan servicing, securitization, and mortgage application records. The data relating to individual mortgage loans was then compared to the representations made in the Offering Materials.

74. The forensic review tested the appraised values and loan-to-value ratio ("LTV") of each property, as represented in the Offering Materials, through an industry-standard automated valuation model ("AVM").

75. The LTV is the ratio of a mortgage loan's original principal balance to the appraised value of the mortgaged property. This ratio was material to MassMutual and other

investors because higher ratios are correlated with a higher risk of default. A borrower with a small equity position in a property has less to lose if he or she defaults on the loan. There is also a greater likelihood that a foreclosure will result in a loss for the lender if the borrower fully leveraged the property. LTV is a common metric for analysts and investors to evaluate the price and risk of mortgage-backed securities.

76. For each of the loans reviewed, the underlying property was valued by an industry-standard AVM. AVMs are routinely used in the industry as a way of valuing properties during prequalification, origination, portfolio review, and servicing. AVMs have become ubiquitous enough that their testing and use is specifically outlined in regulatory guidance and discussed in the Dodd-Frank Act. AVMs rely upon similar data as in-person appraisals—primarily county assessor records, tax rolls, and data on comparable properties. AVMs produce independent, statistically-derived valuation estimates by applying modeling techniques to this data. The AVM that MassMutual used incorporates a database of 500 million mortgage transactions 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.

77. For purposes of MassMutual's forensic review, a retrospective AVM was conducted for each loan to calculate the value of the underlying property at the time each loan was originated. The inputs for each calculation included, *inter alia*, (1) any subsequent sale prices of the target property, (2) sale prices and appraisals of comparable properties in the neighborhood, and (3) changes in home price indices over time.

78. Applying the AVM results to the available data for the loans underlying the Certificates shows that the appraised values given to the properties were often significantly

higher than what the properties were actually worth. This affected the LTV ratios by decreasing the actual value of the properties relative to the loan amounts, which increased the overall ratios. This overvaluation affected numerous statistics in the Offering Materials, as described in detail for each transaction in the next section (Section V.B).

B. Specific Misrepresentations in the Offering Materials.

(1) Impac Secured Assets Corp., Series 2006-1

79. The Prospectus Supplement for the Series 2006-1 securitization represented that the statistical information regarding the mortgage loans was based on a pool of 2,882 sample mortgage loans, 2,607 of which were in Group 1 and served as the collateral for the Certificates purchased by MassMutual. The Prospectus Supplement represented that the weighted average LTV ratio of the Group 1 loans was 76.38%. The Prospectus Supplement also represented that only 295 loans in Group 1 would have a LTV above 90%, which was 11.32% of the sample loan pool.

80. Additionally, the Prospectus Supplement for the Series 2006-1 securitization represented that each appraiser conducting the full appraisal required for each mortgage loan met a variety of qualifications, including independent appraiser requirements:

> [E]ach appraiser must:
>
> - be a state licensed or certified appraiser;
> - meet the independent appraiser requirements for staff appraisers, or, if appropriate, be on a list of appraisers specified by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the FDIC and the Office of Thrift Supervision under their respective real estate appraisal regulations adopted in accordance with Title XI of the Financial Institutions Reform Recovery and Enforcement Act of 1989, regardless of whether the seller is subject to those regulations;

- be experienced in the appraisal of properties similar to the type being appraised;
- be actively engaged in appraisal work; and
- subscribe to a code of ethics that is at least as strict as the code of the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers.

81. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV ratios for the Group 1 loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	76.38% (Group 1)	84.51% (Group 1)
Percentage of Collateral Loans with LTV of Greater than 90%	11.32%[3] (295 loans) (Group 1)	23.03% (600 loans) (Group 1)

82. In total, 44% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 32% of the loans tested had LTVs that were 10 or more points higher than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals

[3] The percentages shown in this chart are based on the total number of loans in the sample.

that deviate so significantly (and so consistently upward) from the true values of the appraised properties.

83. The Impac Defendants and the Underwriter had full access to the appraisal records and all data relating to the collateral loans, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating, purchasing, and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no reasonable relationship to the actual data and characteristics of the properties. They knew that the estimations of the properties' values were unreasonable, inaccurate, and not justified.

(2) Impac Secured Assets Corp., Series 2006-4

84. The Prospectus Supplement for the Series 2006-4 securitization represented that the weighted average LTV ratio of the mortgage loans was 75.53%. It also represented that only 466 mortgage loans would have an LTV above 90%, which was 3.27% of the collateral pool.

85. Additionally, for the loans originated or acquired by Impac Funding pursuant to the Progressive Series Program and the Progressive Express™ Program, the Prospectus Supplement represented that each appraiser conducting the full appraisal required for each mortgage loan met a variety of qualifications, including independent appraiser requirements:

> [E]ach appraiser must:
>
> - be a state licensed or certified appraiser;
> - meet the independent appraiser requirements for staff appraisers, or, if appropriate, be on a list of appraisers specified by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the FDIC and the Office of Thrift Supervision under their respective real estate appraisal regulations adopted in accordance with Title XI of the Financial Institutions Reform Recovery and Enforcement Act of 1989, regardless of whether the seller is subject to those regulations;

- be experienced in the appraisal of properties similar to the type being appraised;
- be actively engaged in appraisal work; and
- subscribe to a code of ethics that is at least as strict as the code of the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers.

86. For the mortgage loans acquired from American Home, the Prospectus Supplement represented that the mortgaged properties were appraised in accordance with the Uniform Standards of Professional Appraisal Practice, and each appraisal was reviewed for accuracy and consistency:

> Every mortgage loan is secured by a property that has been appraised by a licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation. The appraisers perform on-site inspections of the property and report on the neighborhood and property condition in factual and specific terms. Each appraisal contains an opinion of value that represents the appraiser's professional conclusion based on market data of sales of comparable properties and a logical analysis with adjustments for differences between the comparable sales and the subject property and the appraiser's judgment. In addition, each appraisal is reviewed for accuracy and consistency by American Home's vendor management company or an underwriter of American Home or a mortgage insurance company contract underwriter.

87. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	75.53%	82.74%

Percentage of Collateral Loans with LTV of Greater than 90%	3.27%[4] (466 loans)	21.29% (980 loans)

88. In total, 48% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 34% of the loans tested had LTVs that were 10 or more points more than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly (and so consistently upward) from the true values of the appraised properties.

89. The Impac Defendants and the Underwriter had full access to the appraisal records and all data relating to the collateral loans, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating, purchasing, and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no reasonable relationship to the actual data and characteristics of the properties. They knew that the estimations of the properties' values were unreasonable, inaccurate, and not justified.

VI. MISREPRESENTATIONS ABOUT OWNER-OCCUPANCY STATISTICS REVEALED BY A FORENSIC REVIEW OF THE MORTGAGE LOANS

A. Owner-Occupancy Testing

90. The forensic review commissioned by MassMutual also tested the accuracy of the representations of owner-occupancy in the Offering Materials.

[4] The percentages shown in this chart are based on the total outstanding principal balance of the loans.

91. Owner-occupancy statistics were material to MassMutual and other investors because high owner-occupancy rates would have made the Certificates safer investments than Certificates backed by second homes or investment properties. Homeowners who reside in mortgaged properties are less likely to default than owners who purchase homes as investments or second homes and live elsewhere.

92. MassMutual's forensic review tested the accuracy of the representations of owner-occupancy in the Offering Materials. To determine whether a given borrower actually occupied the property as claimed, MassMutual investigated tax information for the loans. One would expect that a borrower residing at a property would have the tax bills sent to that address, and would take applicable tax exemptions available to residents of that property. If a borrower had his or her tax records sent to another address, that is evidence that that borrower was not actually residing at the mortgaged property. If a borrower declined to make certain tax exemption elections that depend on the borrower living at the property, that also is evidence the borrower was living elsewhere. MassMutual also reviewed: (1) borrower credit records, because one would expect that people have bills sent to their primary address. If a borrower was telling creditors to send bills to another address, even six months after buying the property, that is evidence the borrower was living elsewhere; (2) property records, because it is unlikely that a borrower lives in any one property if in fact that borrower owns multiple properties. It is even more unlikely that the borrower resides at the mortgaged property if a concurrently-owned separate property did not have its own tax bills sent to the property included in the mortgage pool; and (3) records of other liens, because if the property was subject to additional liens but those materials were sent elsewhere, that is evidence the borrower was not living at the

mortgaged property. If the other lien involved a conflicting declaration of residency, that too would be evidence that the borrower did not live in the subject property .

93. If a property fails more than one of the above tests, that is strong evidence the borrower did not in fact reside at the mortgaged property. As described more fully in Section VI.B below, the results of MassMutual's loan-level analysis of true owner-occupancy rates on the mortgage loans underlying its Certificates show that, despite the prospectus representations, a much higher percentage of borrowers did not occupy the mortgaged properties than was represented.

B. Specific Misrepresentations in the Offering Materials.

(1) Impac Secured Assets Corp., Series 2006-1 - Group 1

94. The Offering Materials for the Series 2006-1 securitization represented that 1,662 Group 1 mortgage loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 11.56% of the mortgage loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 1,662 loans being owner occupied, as represented in the Offering Materials, only 1,470 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	1,662 (63.75%)[5] (Group 1)	1,470 (56.39%) (Group 1)

[5] The percentages shown in this section are based on the total number of loans.

(2) Impac Secured Assets Corp., Series 2006-4

95. The Offering Materials for the Series 2006-4 securitization represented that 3,753 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 15.45% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 3,753 of the loans being owner occupied, as represented in the Offering Materials, only 3,173 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	3,753 loans (71.17%)	3,173 (60.17%)

VII. LIABILITY OF THE SPONSOR, DEPOSITOR, UNDERWRITER, AND TRUSTS AS SELLERS OF SECURITIES TO MASSMUTUAL

96. The defendants that qualify as sellers of securities under the Massachusetts Uniform Securities Act are the Sponsor (Impac Funding), Depositor (Impac Secured), Underwriter (Bear Stearns), and Trusts. Each of these is primarily liable for misrepresentations in the Offering Materials under Massachusetts General Laws, Chapter 110A, Section 410(a)(2).

97. As the Sponsor for both securitizations at issue, Impac Funding originated and/or acquired the mortgage loans that were pooled together in the securitizations, and then sold, transferred, or otherwise conveyed title to those loans to the Depositor (Impac Secured). Impac Funding had responsibility for preparing the Offering Materials that were used to solicit purchases of the Certificates, and was identified as the Sponsor on the Prospectuses and Prospectus Supplements. Impac Funding earned revenue based on the sales of the Certificates to investors, including MassMutual.

98. As the Depositor for both securitizations at issue, Impac Secured purchased the mortgage loans from Impac Funding. The Depositor then sold, transferred, or otherwise conveyed the mortgage loans to the Trusts, which held the loans as collateral for the Certificates. The Depositor was involved in the preparation of the Offering Materials that were used to solicit purchases of the Certificates, and was identified on the Prospectuses and Prospectus Supplements. In addition, the Depositor was responsible for registering the offerings with the Securities and Exchange Commission. The Depositor earned revenue based on the sales of the Certificates to investors, including MassMutual.

99. The Trusts issued the Certificates that were sold to investors, including MassMutual. The Trusts were agents of the Depositor created for the sole purposes of holding the pools of mortgage loans and issuing the Certificates for sale to the investors.

100. The Sponsor, Depositor, and Trusts used the Underwriter (Bear Stearns) to market and sell the Certificates. The Underwriter was responsible for underwriting and managing the sale of Certificates, including screening the mortgage loans for compliance with the appropriate underwriting guidelines. The Underwriter profited from the sales of the Certificates.

101. The Sponsor, Depositor, Underwriter, and Trusts successfully solicited MassMutual's purchase of the Certificates at issue. The Underwriter transferred title in the Certificates to MassMutual.

VIII. LIABILITY OF THE SPONSOR, DEPOSITOR, AND REMAINING DEFENDANTS AS CONTROL PERSONS

Impac Funding

102. Impac Funding, as the Sponsor, had day-to-day control over the Depositor (Impac Secured) and, through the Depositor, the two Trusts. Impac Funding acquired and selected the loans that would be securitized and determined the terms under which those loans were sold to

the Depositor and then to the Trusts. Impac Funding also determined and approved the structure of the securitizations and the manner in which the Depositor and the Trusts sold the Certificates, and controlled the disclosures made in connection with each securitization.

Impac Secured

103. Impac Secured, as the Depositor, had day-to-day control over the Trusts. Impac Secured created these two Trusts and used them as agents to hold the pools of underlying mortgage loans and issue the Certificates for sale to the investors. Impac Secured formed the pools of mortgage loans underlying the Certificates, and determined the tranches of interests in the pools and their various levels of seniority. Impac Secured then transferred the pools to the Trusts, which had no discretion or control over the mortgages in the pool. Impac Secured also controlled the disclosures made in connection with each securitization and registered the offering of the Certificates with the Securities and Exchange Commission.

Richard J. Johnson

104. Defendant Richard J. Johnson was involved in the day-to-day financial affairs of Impac Funding, the Sponsor and a primary violator, as its Chief Financial Officer, Executive Vice President, and Treasurer. Johnson was also involved in the day-to-day affairs of Impac Secured, the Depositor and a primary violator, as its Chief Financial Officer and Executive Vice President. Johnson had control over the securitizations at issue, as evidenced by his signature on the registration statements for both securitizations.

Joseph R. Tomkinson

105. Defendant Joseph R. Tomkinson was involved in the day-to-day financial affairs of Impac Funding, the Sponsor and a primary violator, as its Chairman of the Board and Chief Executive Officer. Tomkinson was also involved in the day-to-day affairs of Impac Secured, the Depositor and a primary violator, as its Chief Executive Officer. Tomkinson had control over

the securitizations at issue, as evidenced by his signature on the registration statements for both securitizations.

IX. J.P. MORGAN SECURITIES' LIABILITY AS SUCCESSOR-IN-INTEREST TO BEAR STEARNS' LIABILITIES

106. Bear Stearns was, at the relevant time, a wholly owned subsidiary of The Bear Stearns Companies, Inc. ("BSI"). Pursuant to a merger agreement effective May 30, 2008, JPMorgan Chase & Co. ("JPMorgan") acquired the assets and operations of BSI and its subsidiaries, including Bear Stearns. On or about October 1, 2008, J.P. Morgan Securities Inc., merged with Bear Stearns, and the surviving entity was renamed J.P. Morgan Securities, Inc. On or about September 1, 2010, J.P. Morgan Securities, Inc. converted to a limited liability company.

107. In a June 20, 2008 press release, JPMorgan described the merger of J.P. Morgan Securities and Bear Stearns, and stated its intent to assume Bear Stearns and its debts, liabilities, and obligations:

> Following completion of this transaction, Bear Stearns plans to transfer its broker-dealer subsidiary Bear, Stearns & Co. Inc. to JPMorgan Chase, resulting in a transfer of substantially all of Bear Stearns' assets to JPMorgan Chase. In connection with such transfer, JPMorgan Chase will assume (1) all of Bear Stearns' then-outstanding registered U.S. debt securities; (2) Bear Stearns' obligations relating to trust preferred securities; (3) Bear Stearns' then-outstanding foreign debt securities; and (4) Bear Stearns' guarantees of then-outstanding foreign debt securities issued by subsidiaries of Bear Stearns, in each case, in accordance with the agreements and indentures governing these securities.

108. Similarly, JPMorgan’s 2008 Annual Report described the transaction as a merger:

> On October 1, 2008, J.P. Morgan Securities Inc. merged with and into Bear, Stearns & Co. Inc., and the surviving entity changed its name to J.P. Morgan Securities Inc.

109. The former Bear Stearns website redirects Bear Stearns' customers to J.P. Morgan Securities' website.

110. J.P. Morgan Securities was fully aware of the pending claims and potential claims against Bear Stearns when it consummated the merger.

111. J.P. Morgan Securities has further evinced its intent to assume Bear Stearns' liabilities by paying to defend and settle lawsuits brought against Bear Stearns.

112. As a result of its merger with Bear Stearns, J.P. Morgan Securities is the successor in liability to Bear Stearns and is jointly and severally liable for the wrongful conduct alleged herein of Bear Stearns.

FIRST CAUSE OF ACTION
(Primary Violations of the Massachusetts Uniform Securities Act)

113. MassMutual incorporates by reference and realleges each and every allegation as set forth above in paragraphs 1 through 112 as if fully set forth herein.

114. Under Massachusetts General Laws, Chapter 110A, Section 410(a)(2), any person who "offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading," is liable to the purchaser of the security.

115. The Sponsor (Impac Funding), the Depositor (Impac Secured), the Underwriter (Bear Stearns), and the Trusts (although not named as defendants) qualify as sellers of the Certificates because they issued, marketed, and/or sold the Certificates to the public for their own financial benefit.

116. The Sponsor, Depositor, Underwriter, and Trusts offered to sell and sold the Certificates to MassMutual in the State of Massachusetts.

117. The Sponsor, Depositor, Underwriter, and Trusts offered and sold the Certificates to MassMutual by means of false and misleading statements of material fact and omissions of material facts necessary to make the statements made not misleading.

118. As set forth in more detail in paragraphs 35 to 95 above, the public statements of the Sponsor, Depositor, Underwriter, and Trusts in the Offering Materials were materially false and misleading because, among other things, they misrepresented the underwriting standards that applied to the mortgage loans backing the Certificates, misrepresented the LTV and appraisal information for the loans, and misrepresented the owner-occupancy information for the loans.

119. MassMutual did not know, and in the exercise of due diligence could not have known, of the untruths and omissions when it purchased the Certificates.

120. MassMutual did not know, and did not have reason to know or suspect, the material facts supporting the claims herein more than four years before the date of filing.

121. J.P. Morgan Securities, as successor-in-interest to Bear Stearns, is liable for the damages caused by this primary violator.

122. MassMutual will elect its remedy before the entry of judgment. For each Certificate, MassMutual will seek statutory damages, including interest, or will make or arrange a tender before entry of judgment.

SECOND CAUSE OF ACTION
(Joint and Several Liability Under the Massachusetts Uniform Securities Act)

123. MassMutual incorporates by reference and realleges each and every allegation as set forth above in paragraphs 1 through 122 as if fully set forth herein.

124. Under Massachusetts General Laws, Chapter 110A, Section 410(b), "[e]very person who directly or indirectly controls a seller liable under subsection (a), every partner,

officer, or director of such a seller, [and] every person occupying a similar status or performing similar functions" is liable jointly and severally with and to the same extent as the seller.

125. As set forth above, the Sponsor (Impac Funding), the Depositor (Impac Secured), the Underwriter (Bear Stearns), and the Trusts are liable as sellers under subsection (a).

126. Defendant Impac Funding is jointly and severally liable to the same extent as the primary violators because it controlled one or more primary violators (specifically, Impac Secured and the Trusts), including their operations and the securitizations at issue.

127. Defendant Impac Secured is jointly and severally liable to the same extent as the primary violators because it controlled one or more primary violators (specifically, the Trusts), including their operations and the securitizations at issue.

128. Defendant Richard J. Johnson is jointly and severally liable to the same extent as the primary violators because he was an officer of one or more primary violators and controlled their operations, including the securitizations at issue.

129. Defendant Joseph R. Tomkinson is jointly and severally liable to the same extent as the primary violators because he was an officer and director of one or more primary violators and controlled their operations, including the securitizations at issue.

PRAYER FOR RELIEF

WHEREFORE MassMutual prays for relief as follows:

1. On the first cause of action, for primary violations of the Massachusetts Uniform Securities Act, relief in the form of damages and/or statutory recovery upon tender;

2. On the second cause of action, for joint and several liability under the Massachusetts Uniform Securities Act, relief in the form of damages and/or statutory recovery upon tender; and

3. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), MassMutual hereby demands a trial by jury on all issues triable by jury.

DATED: May 6, 2011

EGAN, FLANAGAN AND COHEN, P.C.

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