

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee for the Trusts listed in Exhibits 1-A and 1-B,

Plaintiff,

v.

FEDERAL DEPOSIT INSURANCE CORPORATION,
as receiver for Washington Mutual Bank; JPMORGAN
CHASE BANK, National Association; and
WASHINGTON MUTUAL MORTGAGE
SECURITIES CORPORATION,

Defendants.

Case No.: 09-CV-1656-RMC
Hon. Rosemary M. Collyer

JURY TRIAL DEMANDED

AMENDED COMPLAINT

Plaintiff Deutsche Bank National Trust Company, as trustee for the Trusts listed in Exhibits 1-A and 1-B (“DBNTC” or the “Trustee”), for its Amended Complaint (“Complaint”) against the Federal Deposit Insurance Corporation, as receiver for Washington Mutual Bank; JPMorgan Chase Bank, National Association; and Washington Mutual Mortgage Securities Corporation (collectively the “Defendants”), upon information and belief, alleges as follows:

PARTIES

1. DBNTC is a national banking association organized under the laws of the United States of America to carry on the business of a limited purpose trust company. DBNTC’s main office and principal place of business is located at 300 South Grand Avenue, Suite 3950, Los Angeles, California 90071, and the principal site of its trust administration is located at 1761 East St. Andrew Place, Santa Ana, California 97025.

2. DBNTC serves as trustee and in various other related capacities for 99 trusts (the “Primary Trusts”) created, sponsored, and/or serviced by Washington Mutual Bank, its

subsidiaries, their predecessors-in-interest and their affiliates, including Washington Mutual Mortgage Securities Corporation (“WMB”). See Exhibit 1-A. The Primary Trusts provide for the issuance of residential mortgage-backed securities and certain other mortgage-related securities. The Primary Trusts currently hold, as trust assets or collateral, mortgage loans originated or acquired by WMB and sold into the Primary Trusts.

3. DBNTC also serves as indenture trustee or in other capacities for 28 secondary trusts or entities through which WMB issued mortgage-backed or derivative securities whose performance is dependent, in whole or in part, on the performance of the Primary Trusts or of other residential mortgage-backed securities issued by WMB (the “Secondary Trusts”). See Exhibit 1-B. The Secondary Trusts are express or implied third-party beneficiaries of the Primary Trusts and, as such, have standing to enforce the terms and conditions thereof. See, e.g., Pooling and Servicing Agreement for Long Beach Mortgage Loan Trust, Series 2005-3, passim (Issue ID No. LB0503) (voting, consent, payment and other rights of NIM Insurer, Other NIM Notes and Holders of Class C and Class P Certificates); Indenture Agreement for Long Beach Asset Holding Corp. CI 2005-03 (Issue ID No. LB05N5) (Granting Clause conveying LB2005-3 Class C and Class P “Underlying Certificates” as Trust Estate; § 1.01, definition of “Underlying Agreement” and “Underlying Certificates”; Article 6, “Administration of the Trust Estate”; § 9.11, “Certain Representations Regarding the Trust Estate”). The Primary Trusts, and the Secondary Trusts, as appropriate, are referred to herein collectively as the “Trusts.”

4. The Primary Trusts’ original principal balance outstanding was approximately \$165 billion. As of September 25, 2008, the Primary Trusts’ current principal balance outstanding was approximately \$45 billion. As of September 2, 2010, the Primary Trusts’ current principal balance outstanding was approximately \$34 billion.

5. The Trustee brings this action on behalf of the Trusts and the investors in the Trusts.

6. The Trusts are “express trusts” created by written instruments manifesting the express intention to create a trust and setting forth the subject, purpose and beneficiaries of the Trusts. The Trustee therefore brings this action pursuant to Federal Rule of Civil Procedure 17(a)(1)(E) as the trustee of an express trust for the benefit of the Trusts and the investors in the Trusts.

7. The Federal Deposit Insurance Corporation (“FDIC”) is an independent agency of the United States created by the Federal Deposit Insurance Act (the “FDI Act”), 12 U.S.C. § 1811 et seq., and related laws and regulations. The FDIC acts, from time-to-time and among other things, as a receiver for and/or conservator of banking institutions. The Trustee brings this action against the FDIC solely in its capacity as receiver for WMB.

8. JPMorgan Chase Bank, National Association (collectively, with its affiliates, including but not limited to Washington Mutual Mortgage Securities Corporation, “JPMC”) is a national banking association under the provisions of federal law, pursuant to the National Bank Act, 12 U.S.C. § 21 et seq., with its principal place of business in Columbus, Ohio. JPMC maintains an office at 800 Connecticut Avenue NW, Washington, DC 20006. JPMC is a wholly-owned subsidiary of JPMorgan Chase & Co., a corporation organized under the laws of the state of Delaware.

9. Washington Mutual Mortgage Securities Corporation (“WMMSC”) is a Delaware corporation. WMMSC was a wholly-owned subsidiary of WMB, and is currently a wholly-owned subsidiary of JPMC.

10. WMB was the United States' largest savings and loan association with total assets of over \$300 billion as of June 30, 2008. On September 25, 2008, the Director of the Office of Thrift Supervision ("OTS"), by Order Number 2008-36, shut down WMB and appointed the FDIC as receiver for WMB.

11. On September 25, 2008, JPMC entered into a Purchase and Assumption Agreement dated as of the same day (the "PAA") with the FDIC, under which JPMC agreed to purchase substantially all of WMB's assets and assume substantially all of its liabilities (including WMMSC). The PAA was facilitated by the FDIC and the FDIC was a party to the PAA in both its corporate capacity and as receiver for WMB. The PAA is incorporated herein by reference and attached hereto as Exhibit 2.

12. In connection with JPMC's purchase of WMB, JPMC conducted a due diligence review of WMB, including a review of WMB's loan tapes and data and discussions with WMB employees.

13. The Trustee originally brought this action against the FDIC, as receiver for WMB. The FDIC now asserts that all of the liabilities with respect to the claims asserted by the Trustee on behalf of the Trusts have been assumed by JPMC. JPMC denies that it has assumed these liabilities. The Trustee thus brings this action against WMB and its successors or successors-in-interest, whoever they are adjudicated to be (collectively, "WaMu").

THE PROOF OF CLAIM AND ORIGINAL COMPLAINT

14. On December 30, 2008, the Trustee timely filed with the FDIC a Proof of Claim on behalf of the Trusts and the Trustee pursuant to 12 U.S.C. § 1821(d). The Proof of Claim, which is incorporated herein by reference and attached hereto as Exhibit 3, sets forth various claims against the FDIC relating to the Trusts.

15. Pursuant to 12 U.S.C. § 1821(d)(5)(A)(i), the FDIC should have determined whether to allow or disallow the Trustee's Proof of Claim within 180 days of December 30, 2008.

16. Pursuant to 12 U.S.C. § 1821(d)(5)(A)(iv), the FDIC was further required to give the Trustee notice of disallowance of its claims, which notice was required to contain "a statement of each reason for the disallowance" and "the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim."

17. The FDIC failed to respond to the Proof of Claim and failed to issue any notice of disallowance to the Trustee.

18. Pursuant to 12 U.S.C. § 1821(d)(6)(A)(i), the FDIC's failure to respond timely to the Proof of Claim triggered the Trustee's right to "file suit on such claim in the district or territorial court of the United States for the district within which the depository institution's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim)" within 60 days thereafter.

19. On August 26, 2009, the Trustee timely filed this action against the FDIC as receiver for WMB.

JURISDICTION AND VENUE

20. This action arises under the FDI Act, 12 U.S.C. § 1811 et seq., as amended. The claims raised herein include, without limitation, an appeal from the FDIC's rejection, pursuant to 12 U.S.C. § 1821(d)(6), of the Proof of Claim by virtue of the FDIC's failure to respond to the Proof of Claim. The statutorily-prescribed proper forum for jurisdiction and venue for such an appeal expressly includes the United States District Court for the District of Columbia. 12

U.S.C. § 1821(d)(6). This Court has jurisdiction over the subject matter of this action pursuant to 12 U.S.C. §§ 1819(b)(2)(A), 1821(d)(6) and 28 U.S.C. § 1331.

21. The FDIC takes the position in its motion to dismiss the initial complaint (docket entry 20) that, pursuant to the PAA, the FDIC transferred to JPMC, and JPMC expressly agreed to assume, all of WaMu's "Trust-related" liabilities and obligations, including "liability for all Trust-related claims" asserted in this action by the Trustee. The PAA was entered into pursuant to and in furtherance of the federal statutory provisions governing the FDIC's administration of the receivership of WMB. Determination of the relative rights and responsibilities of the FDIC and JPMC under the PAA is therefore a federal question pursuant to 12 U.S.C. §§ 1819(b)(2)(A), 1821(d)(6) and 28 U.S.C. § 1331.

22. This Court also has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332.

23. This Court also has jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1367.

24. Venue is proper in this Court pursuant to 12 U.S.C. § 1821(d)(6) and 28 U.S.C. § 1391(e).

BACKGROUND

A. The Trusts

25. WaMu sponsored and/or otherwise participated in the issuance of mortgage-backed securities pursuant to which WaMu sold investors interests in residential mortgage loans originated by WaMu or by third party loan originators from whom WaMu had acquired loans. These securities are commonly referred to as "Residential Mortgage-Backed Securities" or "RMBS."

26. Many RMBS, including most of the securities issued by the Trusts, are established under a provision of the Tax Code allowing for the creation of a Real Estate Mortgage Investment Conduit (a “REMIC”), which allows the issuance of multiple classes of securities in trust certificate form, with monthly payments and no residual equity, that are treated as debt for tax purposes (plus an equity-like class called the “residual interest”). See Internal Revenue Code §§ 860A-860G.

27. Securitization is a common financing tool used to pool and convert financial assets such as residential mortgages into financial instruments that can be sold in the capital markets. Between 2000 and 2007, WaMu securitized approximately \$77 billion in principal amount of subprime home mortgage loans.

28. Although the exact structures of RMBS transactions are varied and can be fairly complex, the structure of the Primary Trusts, as well as most RMBS transactions, involves the following parties:

a. **Depositor and Seller:** The depositor is the entity that acquires the pool of mortgage loans and deposits the loans in a trust formed by the depositor pursuant to the governing documents for the transaction. The depositor assigns the legal and beneficial interest in the mortgage loans, including related collateral, to the trust. In many RMBS transactions, the depositor purchases the mortgage loans from another entity, referred to as the seller, and deposits the pool of loans into the trust. As set forth in Exhibit 1-A, with respect to the Primary Trusts, WaMu served as the Depositor and/or Seller for 97 of the 99 Primary Trusts. Through a series of assignments and other agreements, WaMu indirectly undertook responsibilities substantially similar to those of a Depositor or Seller for the remaining two Primary Trusts. See Exhibit 1-A, n.1.

b. **The Trust:** The trust purchases the mortgage loans from the depositor and issues RMBS, which represent specific interests in and entitlements to the cash flows derived from the trust's assets (i.e., the mortgage loans). The governing documents forming the trust typically appoint an independent trustee and specify the trustee's rights, responsibilities and powers in respect of the RMBS transaction.

c. **Investors:** By purchasing RMBS, investors acquire the right to receive monies from the cash flows of the underlying mortgage loans held as trust assets or collateral by the trust (in the form of borrower payments of principal and interest and proceeds from the liquidation of loan collateral). Those cash flows are applied to payment of the RMBS pursuant to a contractually specified distribution plan and schedule.

d. **Servicer:** The servicer is the day-to-day administrator of the mortgage loan assets held by the trust. Under the governing documents forming the trust, the servicer is required to administer the mortgage loans in the best interests of RMBS investors. The servicer's responsibilities include collecting payments due from the borrowers, remitting those payments to the trust for ultimate payment to the investors, and furnishing the trustee or a securities administrator with performance data regarding the mortgage loans in the pool. The servicer-generated data is used to calculate the distribution of funds and report pool performance to investors. The servicer also conducts all remedial activity on behalf of the trust when borrowers default on their loans. Such remedial servicing activity requires the servicer to review relevant loan files, act as the trust's sole source of contact with the borrower, and inquire into the status of the borrower and the mortgage loan collateral. As set forth in Exhibit 1-A, WaMu is the

Servicer or Master Servicer for the mortgage loans included in the Primary Trusts, in addition to serving as the Depositor and Seller as set forth above.

B. WaMu's Contractual Obligations

(1) The Governing Documents for the Trusts

29. The duties and responsibilities of the various parties to an RMBS transaction are set forth in the governing securitization documents. These documents generally include a mortgage loan purchase agreement (“MLPA”) and a pooling and servicing agreement (“PSA”). The MLPA and PSA provide for the sale of the mortgage loans and contain representations, warranties and covenants made by the seller and/or depositor concerning the nature, characteristics, history and quality of the mortgage loans and mortgage loan files sold to, and deposited in, the trusts. These documents also provide for the establishment and administration of the trust, including setting forth the responsibilities and duties of the depositor, trustee, seller, and servicer with respect to the trust.

30. The PSAs and MLPAs for the Primary Trusts are listed in Exhibit 1-A. The relevant agreements for the Secondary Trusts are listed in Exhibit 1-B. Electronic copies of the documents referenced in Exhibits 1-A and 1-B are being submitted to the Court and the parties as Exhibit 4 and are incorporated herein by reference. The PSAs and MLPAs for the Primary Trusts and the relevant agreements for the Secondary Trusts (each a “Governing Document” and collectively, with all related ancillary documents and agreements for the Trusts, the “Governing Documents”) contain representations, warranties and covenants made by WaMu, as Seller and/or Depositor, concerning the nature, characteristics, history and quality of the mortgage loans and mortgage loan files sold to, and deposited in, the Trusts (the “Representations and Warranties”).

The Governing Documents assign to the Trustee the right to enforce the Representations and Warranties for the benefit of the Trusts' beneficiaries.

31. The Governing Documents represent an integrated set of contractual undertakings on behalf of WaMu with respect to the formation of the Trusts and the servicing by WaMu of the loans sold to, and deposited in, the Trusts.

32. Each Governing Document is a unitary contract that is not divisible.

33. The Governing Documents are executory contracts that involve obligations that are ongoing, mutual, and interrelated.

34. The Governing Documents are fully integrated "Qualified Financial Contracts" under 12 U.S.C. § 1821(e)(8)(D) and, as such, they must be transferred or retained in whole by the FDIC as receiver for WMB. 12 U.S.C. § 1821(e)(9)(i)-(ii).

35. 12 U.S.C. § 1821(e)(2) requires the FDIC to make any determination to repudiate or disaffirm a contract of a failed institution for which it acts as receiver "within a reasonable time" following its appointment as receiver.

36. The FDIC has not within a reasonable time made a determination to exercise any right, as receiver for WMB, to repudiate or disaffirm any Governing Document pursuant to 12 U.S.C. § 1821(e)(1).

37. Given the passage of two years since the FDIC was appointed as receiver for WMB, the FDIC can no longer make such determination to repudiate or disaffirm "within a reasonable time" following its appointment and is now barred from repudiating or disaffirming any Governing Document.

38. The PAA expressly provides that JPMC "specifically assumes all mortgage servicing rights and obligations of [WMB]." PAA (Exhibit 2), § 2.1.

39. The FDIC assigned to JPMC, and JPMC has assumed, all mortgage servicing rights and obligations of WaMu to the extent provided in the PAA.

40. The mortgage servicing rights and obligations of WaMu with respect to the Trusts arose under the Governing Documents.

41. To assign to JPMC any rights and obligations under the Governing Documents, the FDIC, as receiver for WMB, was required first to assume, and not repudiate or disaffirm, such Governing Documents.

42. The Governing Documents:

- a. are all in writing;
- b. were all executed by WaMu and DBNTC, as Trustee, at the time the associated property interests were transferred;
- c. were executed on behalf of WaMu by individuals duly authorized by the applicable WaMu entity's Board of Directors;
- d. have been continuously in existence, since the time of execution, and constitute official books and records of WaMu; and
- e. constituted official books and records of WMB at the time of WMB's closing on September 25, 2008.

43. WaMu's obligations under the Governing Documents include both the Representations and Warranties as well as continuing obligations that require WaMu to, among other things: (i) give prompt written notice to the Trustee and other parties of any breach of the Representations and Warranties that has a material and adverse effect on the value of the mortgage loans in the Trusts or the interests of the Trusts therein; (ii) cure the breach of the Representations and Warranties in all material respects, repurchase the mortgage loans at a

specified repurchase price, or substitute for the affected mortgage loans; (iii) provide the Trustee and other parties with access to all records maintained by WaMu as Servicer in respect of WaMu's rights and obligations under the Governing Documents and access to officers of WaMu responsible for such obligations; and (iv) to indemnify the Trustee for any losses or expenses incurred by the Trustee in, among other things, enforcing the rights of the Trusts and their beneficiaries.

44. As Seller, Depositor and/or Servicer, WaMu has possession of documents and other information concerning the mortgage loans in the Trusts that are not in the possession of the Trustee or other parties acting on behalf of the Trusts, which documents may confirm whether a particular mortgage loan in the Trusts is in breach of any of the Representations and Warranties. Such documents and other information includes origination and underwriting files, servicing records, borrower statements both recorded on tape and transcribed into servicing notes, borrower statements made during the origination of the loan, payment histories, and borrower correspondence.

(2) **WaMu's Representations and Warranties**

45. In connection with each of the Primary Trusts, WaMu, in its various capacities, made Representations and Warranties in the Governing Documents for each of the Primary Trusts. While the specific Representations and Warranties made by WaMu, as Seller and/or Depositor or in various other capacities, are not identical for each of the Primary Trusts, they generally include Representations and Warranties by WaMu regarding the underwriting of the mortgage loans, the loan to value ratios for the mortgage loans, and compliance of the loans with local, state and federal laws.

46. By way of example, Section 6 of the MLPA for the Long Beach Mortgage Loan Trust, Series 2006-2 (Issue ID No. LB0602) (the “LB0602 Trust”), which contains the “Representations and Warranties of the Seller Relating to the Individual Mortgage Loans,” provides that WaMu represents and warrants with respect to the mortgage loans sold to, and deposited in, the LB0602 Trust that:

- a. § 6(vi) – “There is no valid offset, defense or counterclaim to any Mortgage Note (including any obligation of the Mortgagor to pay the unpaid principal of or interest on such Mortgage Note) or the Mortgage, nor will the operation of any of the terms of the Mortgage Note and the Mortgage, or the exercise of any right thereunder, render the Mortgage Note or the Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury and no such right of rescission, set-off, counterclaim or defense has been asserted with respect thereto”;
- b. § 6(ix) – “Each Mortgage Loan at origination complied in all material respects with applicable local, state and federal laws, including, without limitation, predatory and abusive lending, usury, equal credit opportunity, real estate settlement procedures, truth-in-lending and disclosure laws, and consummation of the transactions contemplated hereby, including without limitation the receipt of interest does not involve the violation of any such laws”;
- c. § 6(xvii) – “The Mortgage Note and the related Mortgage are genuine, and each is the legal, valid and binding obligation of the Mortgagor enforceable against the Mortgagor by the mortgagee or its representative in accordance with its terms, except only as such enforcement may be limited by bankruptcy, insolvency,

reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by law. To the best of the Seller's knowledge, all parties to the Mortgage Note and the Mortgage had full legal capacity to execute all Mortgage Loan documents and to convey the estate purported to be conveyed by the Mortgage and each Mortgage Note and Mortgage have been duly and validly executed by such parties”;

- d. § 6(xxii) – “The origination, underwriting and collection practices used by the Seller with respect to each Mortgage Loan have been in all material respects legal, proper, prudent and customary in the subprime mortgage servicing business. Each Mortgage Loan is currently being serviced by Washington Mutual Bank”;
- e. § 6(xxviii) – “There is no default, breach, violation or event of acceleration existing under the Mortgage or the related Mortgage Note; and neither the Seller nor any other entity involved in originating or servicing the Mortgage Loan has waived any default, breach, violation or event of acceleration”;
- f. § 6(xxxii) – “Each Mortgage Loan was underwritten in accordance with the Seller's underwriting guidelines as described in the Prospectus Supplement as applicable to its credit grade in all material respects (the “Underwriting Guidelines”);”;
- g. § 6(xxxiii) – “Each appraisal of a Mortgage Loan that was used to determine the appraised value of the related Mortgaged Property was conducted generally in accordance with the Seller's Underwriting Guidelines, and included an assessment by the appraiser of the fair market value of the related Mortgaged

Property at the time of the appraisal. The Mortgage File contains an appraisal of the applicable Mortgaged Property”;

- h. § 6(xxxv) – “There are no Mortgage Loans with respect to which the monthly payment due thereon in January, 2006 had not been made, none of the Mortgage Loans has been contractually delinquent for more than 30 days more than once during the preceding twelve months and, no Mortgage Loan has ever experienced a delinquency of 60 or more days since the origination thereof”;
- i. § 6(xxxvii) – “To the best of the Seller’s knowledge, no misrepresentation, negligence, fraud or similar occurrence with respect to a Mortgage Loan has taken place on the part of any person, including, without limitation, the Mortgagor, any appraiser, any builder or developer, or any other party involved in the origination of the Mortgage Loan or in the application of any insurance in relation to such Mortgage Loan”;
- j. § 6(xl) – “The Loan-to-Value Ratio for each Mortgage Loan was no greater than 100% at the time of origination”;
- k. § 6(xlii) – “With respect to each Mortgage Loan, the related Mortgagor shall not fail or has not failed to make the first monthly payment due under the terms of the Mortgage Loan by the second succeeding Due Date after the Due Date on which such monthly payment was due”;
- l. § 6(xliv) – “There are no defaults in complying with the terms of the Mortgage, and either (1) any taxes, governmental assessments, insurance premiums, water, sewer and municipal charges or ground rents which previously became due and owing have been paid, or (2) an escrow of funds has been established in an

amount sufficient to pay for every such item which remains unpaid and which has been assessed but is not yet due and payable. Except for payments in the nature of escrow payments, including without limitation, taxes and insurance payments, the Seller has not advanced funds, or induced, solicited or knowingly received any advance of funds by a party other than the Mortgagor, directly or indirectly, for the payment of any amount required by the Mortgage Note, except for interest accruing from the date of the Mortgage Note or date of disbursement of the Mortgage proceeds, whichever is greater, to the day which precedes by one month the Due Date of the first installment of principal and interest”;

- m. § 6(xlviii) – “The Seller did not select the Mortgage Loans with the intent to adversely affect the interests of the Purchaser”; and
- n. § 6(lviii) – “Each Group I Mortgage Loan was originated in compliance with the following anti-predatory lending guidelines: . . . c. The methodology used in underwriting the extension of credit for each Group I Mortgage Loan employs objective mathematical principles which relate the borrower’s income, assets and liabilities to the proposed payment and such underwriting methodology does not rely on the extent of the borrower’s equity in the collateral as the principal determining factor in approving such credit extension. Such underwriting methodology provided reasonable assurance that at the time of origination (application/approval) the borrower had a reasonable ability to make timely payments on the Group I Mortgage Loan.”

47. Attached as Exhibit 5 is an excerpt of Section 6 of the MLPA for the LB0602 Trust cited above. Attached as Exhibit 6 is a chart cross-referencing the fourteen specific

Representations and Warranties listed above from Section 6 of the MLPA for the LB0602 Trust with corresponding Representations and Warranties of a substantially similar nature made by WaMu in the Governing Documents for each of the other Primary Trusts.

48. WaMu as the Seller, Depositor and/or Servicer has exclusive possession of the loan origination and servicing records and, as the Servicer charged with enforcing the terms and conditions of mortgage loans on behalf of the Trusts, WaMu would be the first party acting on behalf of the Trusts likely to discover facts and circumstances that constitute a breach of a Representation and Warranty with respect to any particular mortgage loan in the Trusts, and in most circumstances is the only party able to confirm the existence of such a breach.

(3) WaMu's Notice Obligation

49. The Governing Documents require WaMu, as Seller, Depositor and/or Servicer, to give prompt written notice to the Trustee and other parties upon discovery or notice of any breach of the Representations and Warranties that has a material and adverse effect on the value of the mortgage loans in the Trusts or the interests of the Trusts therein (“the Notice Obligation”).

50. By way of example, the Notice Obligation of WaMu is set forth in Section 2.08 of the PSA for the Washington Mutual Mortgage Securities Corp. Trust, Series 2002-AR2 (Issue ID No. WA02A2) (the “WA02A2 Trust”), in pertinent part, as follows:

Upon discovery by any of the Company, the Master Servicer, the Trustee or the Custodian of a breach of any of the foregoing representations and warranties which materially and adversely affects the value of the related Mortgage Loans or the interests of the Trust in the related Mortgage Loans, the Company, the Master

Servicer, the Trustee or the Custodian, as the case may be, discovering such breach shall give prompt written notice to the others.

51. WaMu's Notice Obligation is also set forth in Section 7(a) of the MLPA for the LB0602 Trust, in pertinent part, as follows:

Upon discovery by the Seller, the Purchaser or any assignee, transferee or designee of the Purchaser of any materially defective document in, or that any material document was not transferred by the Seller (as listed on the Trustee's initial certification), as part of any Mortgage File or of a breach of any of the representations and warranties contained in Section 5 or Section 6 that materially and adversely affects the value of any Mortgage Loan or the interest of the Purchaser or the Purchaser's assignee, transferee or designee (it being understood that with respect to the representations and warranties set forth in the last sentence of (xxxix), (xlvi), the first sentence of (xlvii), (lxi) and (lxiv) of Section 6 herein, a breach of any such representation or warranty shall in and of itself be deemed to materially and adversely affect the interest therein of the Purchaser and the Purchaser's assignee, transferee or designee) in any Mortgage Loan, the party discovering the breach shall give prompt written notice to the others.

52. Attached as Exhibit 7 is a chart indicating the contractual provisions in the Governing Documents for each of the Primary Trusts setting forth WaMu's Notice Obligations with respect to each Primary Trust.

(4) WaMu's Repurchase Obligation

53. The Governing Documents require WaMu, as Seller and/or Depositor, to cure the defect in the mortgage loan file or breach of the Representations and Warranties in all material

respects, repurchase the mortgage loan at a specified repurchase price, or substitute for the affected mortgage loan upon discovery or receipt of notice of any breach of the Representations and Warranties that has a material and adverse effect on the value of the mortgage loans in the Trusts or the interests of the Trusts therein (the “Repurchase Obligation”).

54. Under the Governing Documents for each Primary Trust, WaMu, as Seller and/or Depositor, has Repurchase Obligations to each Primary Trust. By way of example, the Repurchase Obligation is set forth in Section 2.08 of the PSA for the Washington Mutual Mortgage Securities Corp. Trust, Series 2005-AR1 (Issue ID No. WA05A1) (the “WA05A1 Trust”), in pertinent part, as follows:

It is understood and agreed that the representations and warranties set forth in this Section 2.08 shall survive delivery of the respective Mortgage Files to the Trustee or the Custodian, as the case may be, and shall continue throughout the term of this Agreement. Upon discovery by any of the Company, the Master Servicer, the Trustee or the Custodian of a breach of any of the foregoing representations and warranties which materially and adversely affects the value of the related Mortgage Loans or the interests of the Trust in the related Mortgage Loans, the Company, the Master Servicer, the Trustee or the Custodian, as the case may be, discovering such breach shall give prompt written notice to the others. Any breach of the representation set forth in clause (xxix) or (xxx) of this Section 2.08 shall be deemed to materially and adversely affect the value of the related Mortgage Loans or the interests of the Trust in the related Mortgage Loans. Within 90 days of its discovery or its receipt of notice of breach, the Company shall repurchase, subject to the limitations set forth in the definition of “Purchase

Price” or substitute for the affected Mortgage Loan or Mortgage Loans or any property acquired in respect thereof from the Trust, unless it has cured such breach in all material respects. After the end of the three-month period beginning on the “start-up day,” any such substitution shall be made only if the Company provides to the Trustee an Opinion of Counsel addressed to the Trust and the Trustee reasonably satisfactory to the Trustee that each Substitute Mortgage Loan will be a “qualified replacement mortgage” within the meaning of Section 860G(a)(4) of the Code. Such substitution shall be made in the manner and within the time limits set forth in Section 2.07. Any such repurchase by the Company shall be accomplished in the manner and at the Purchase Price if applicable, but shall not be subject to the time limits, set forth in Section 2.07. It is understood and agreed that the obligation of the Company to provide such substitution or to make such repurchase of any affected Mortgage Loan or Mortgage Loans or any property acquired in respect thereof as to which a breach has occurred and is continuing shall constitute the sole remedy respecting such breach available to the Holders of the REMIC I Regular Interests and the Class R-1 Residual Interest or the Trustee on behalf of the Holders of the REMIC I Regular Interests and the Class R-1 Residual Interest.

55. WaMu’s Repurchase Obligation is also set forth in Section 2.03(a) of the PSA for the LB0602 Trust, in pertinent part, as follows:

Upon discovery or receipt of notice of any materially defective document in, or that a document is missing from, the Mortgage File or of the breach by the Seller of any representation, warranty or covenant under the Mortgage Loan Purchase

Agreement in respect of any Mortgage Loan which materially and adversely affects the value of such Mortgage Loan or the interest therein of the Certificateholders (it being understood that (i) in the case of any such representation or warranty made to the knowledge or the best of knowledge of the Seller, as to which the Seller has no knowledge, without regard to the Seller's lack of knowledge with respect to the substance of such representation or warranty being inaccurate at the time it was made or (ii) with respect to the representation and warranty set forth in the last sentence of Section 6(xxxix), Section 6(xlvi), the first sentence of Section 6(xlvii), Section 6(lxi) and Section 6(lxiv) of the Mortgage Loan Purchase Agreement, a breach of any such representation or warranty shall in and of itself be deemed to materially and adversely affect the interest of the Certificateholders in the related Mortgage Loan), the Trustee shall promptly notify the Depositor, the Seller, the NIMS Insurer and the Master Servicer of such defect, missing document or breach and request that the Seller deliver such missing document or cure such defect or breach within 90 days from the date the Seller was notified of such missing document, defect or breach (except as described in Section 2.03(e)), and if the Seller does not deliver such missing document or cure such defect or breach in all material respects during such period, the Master Servicer (or, in accordance with Section 3.02(b), the Trustee) shall enforce the obligations of the Seller under the Mortgage Loan Purchase Agreement to repurchase such Mortgage Loan from REMIC 1 at the Purchase Price within 90 days after the date on which the Seller was notified (subject to Section 2.03(e)) of such missing document, defect or breach, if and to

the extent that the Seller is obligated to do so under the Mortgage Loan Purchase Agreement.

56. The Trusts' remedies for breaches of the Representations and Warranties, including, but not limited to, the Repurchase Obligations, are especially important because many of the mortgage loans sold to, and deposited in, the Trusts are subprime and were made to borrowers who represent higher credit risks than traditional borrowers. Thus, seemingly small differences in a borrower's qualifications, the terms of the mortgage loan, the quality and value of mortgage loan collateral, or the integrity of the mortgage loan-origination process could materially and adversely affect the value of the mortgage loans in the Trusts or the interests of the Trusts therein.

57. Attached hereto as Exhibit 7 is a chart indicating the contractual provisions in the Governing Documents for each Primary Trust setting forth WaMu's Repurchase Obligations with respect to each Primary Trust.

(5) **The Trustee's Access and Indemnification Rights**

58. Under the Governing Documents for each Primary Trust, WaMu, as Servicer, is obligated to provide the Trustee and other parties with access to all records maintained by WaMu in respect of WaMu's rights and obligations under the Governing Documents, including information about the mortgage loans and the mortgage loan files, and access to officers of WaMu responsible for such obligations (the "Access Rights").

59. By way of example, the Access Rights are set forth in Section 6.05 of the PSA for the LB0602 Trust, in pertinent part, as follows:

The Master Servicer shall afford (and any Sub-Servicing Agreement shall provide that each Sub-Servicer shall afford) the Depositor, the NIMS Insurer and the

Trustee, upon reasonable notice, during normal business hours, access to all records maintained by the Master Servicer (and any such Sub-Servicer) in respect of the Master Servicer's rights and obligations hereunder and access to officers of the Master Servicer (and those of any such Sub-Servicer) responsible for such obligations.

60. WaMu, in its various capacities, is also obligated under the Governing Documents for each Primary Trust to indemnify the Trustee for any losses or expenses incurred by the Trustee in, among other things, enforcing the rights of the Trusts (the "Indemnification Rights"). By way of example, the Indemnification Rights are set forth in Section 8.05(b) of the PSA for the LB0602 Trust, in pertinent part, as follows:

Without limiting the Master Servicer's indemnification obligations under Section 6.03, the Master Servicer agrees to indemnify the Trustee from, and hold it harmless against, any loss, liability or expense resulting from a breach of the Master Servicer's obligations and duties under this Agreement. Such indemnity shall survive the termination or discharge of this Agreement and the resignation or removal of the Trustee. Any payment under this Section 8.05(b) made by the Master Servicer to the Trustee shall be from the Master Servicer's own funds, without reimbursement from the Trust Fund therefor.

61. Both before and after the date the FDIC was appointed as receiver of WMB, the Trustee and/or Trusts have been subject to claims, including litigation claims, by borrowers and other parties alleging, among other things, violations of federal and state laws relating to the servicing of the mortgage loans in the Trusts. Accordingly, the Indemnification Rights have both matured and continue to accrue with respect to existing and future claims.

62. Attached as Exhibit 7 is a chart indicating some of the contractual provisions in the Governing Documents setting forth the Access Rights and the Indemnification Rights with respect to each Primary Trust.

(6) WaMu's Servicing Obligations

63. The Governing Documents for each Primary Trust further provide that WaMu must service and administer the mortgage loans in the Trusts on behalf of the Trustee, and in the best interests of, and for the benefit of, the Trusts' beneficiaries, in a particular manner (the "Servicing Obligations"). These Servicing Obligations are set forth in the Governing Documents for each Primary Trust. By way of example, these Servicing Obligations are set forth in Section 3.01 of the PSA for the Long Beach Mortgage Loan Trust, Series 2006-4 (Issue ID No. LB0604), in pertinent part, as follows:

The Master Servicer shall service and administer the Mortgage Loans on behalf of the Trustee and in the best interests of and for the benefit of the Certificateholders (as determined by the Master Servicer in its reasonable judgment) in accordance with the terms of this Agreement and the respective Mortgage Loans and, to the extent consistent with such terms, in the same manner in which it services and administers similar mortgage loans for its own portfolio, giving due consideration to customary and usual standards of practice of mortgage lenders and loan servicers administering similar mortgage loans in the local areas where the related Mortgaged Property is located but without regard to: (i) any relationship that the Master Servicer, any Sub-Servicer or any Affiliate of the Master Servicer or any Sub-Servicer may have with the related Mortgagor; (ii) the ownership or non-ownership of any Certificate by the Master Servicer or any Affiliate of the Master

Servicer; (iii) the Master Servicer's obligation to make Advances or Servicing Advances; or (iv) the Master Servicer's or any Sub-Servicer's right to receive compensation for its services hereunder or with respect to any particular transaction.

64. Under many of the PSAs for the Primary Trusts, the Servicer is obligated to enforce the Repurchase Obligations on behalf of the Trust to the extent that it is not the Seller. See, e.g., §§ 2.03(a), 3.02(b) of the PSA for the LB0602 Trust.

C. WaMu Breached the Representations and Warranties

65. In April 2010, the United States Senate Subcommittee on Investigations (the "Senate Subcommittee") held hearings about WaMu's origination and securitization of mortgage loans. Based on the Senate Subcommittee's findings, as well as the reports of other governmental agencies, the Trustee has reason to believe that many of the mortgage loans in the Trusts do not comply with the Representations and Warranties and that WaMu breached the Representations and Warranties, which breaches had a material and adverse effect on the value of the loans or the interests of the Trusts therein.

66. Because WaMu has denied the Trustee access to records maintained by WaMu, as Servicer, and has repeatedly refused to honor the Trustee's contractual Access Rights, the Trustee is unable to specifically identify particular mortgage loans with respect to which there have been such breaches of particular Representations and Warranties. Notwithstanding, there is a reasonable basis to conclude that many of the mortgage loans included in the Trusts do not comply with the Representations and Warranties, and that WaMu breached the Representations and Warranties, which breaches had a material and adverse effect on the value of the loans or the interests of the Trusts therein.

67. The Senate Subcommittee investigation covered both WaMu's Wholesale Specialty Lending division ("Specialty Lending") and WaMu's Mutual Mortgage Securities division ("Mutual Mortgage"). The Senate Subcommittee found that between 2000 and 2007, WaMu's Specialty Lending, *i.e.*, subprime lending, sponsored 46 securitizations with a total original collateral balance of approximately \$77 billion. These securitizations were primarily by WaMu's Long Beach Mortgage Company ("Long Beach") affiliate. The Primary Trusts include 43 of the 46 subprime securitizations referenced in the Senate Committee report, with a total original collateral balance of approximately \$73 billion – or over 95 percent of all of WaMu's subprime securitizations during the time period. Wall Street and the Financial Crisis: Hearing before the Permanent Subcomm. On Investigations, April 13, 2010, ("Subcommittee Hearing"), Hearing Ex. #45. See Exhibit 1-A (Trusts 1-43).

68. The remaining Primary Trusts, with a total original collateral balance of approximately \$92 billion, account for nearly half of the securitizations of WaMu's Mutual Mortgage division between 2000 and 2007 that were analyzed by the Senate Subcommittee. Id., Hearing Ex. #46.

69. The Senate Subcommittee found that "WaMu selected *and securitized* loans that it had identified as likely to go delinquent, *without disclosing its analysis to investors who bought the securities.*" The Senate Subcommittee also found that WaMu "*securitized* loans tainted by fraudulent information, *without notifying purchasers of the fraud that was discovered.*" Id., Hearing Ex. #1a, at p. 6 (emphasis added).

70. The Senate Subcommittee report, associated hearings, and documents released related to those hearings (collectively, the "Senate Record") provide multiple examples of WaMu's breaches of Representations and Warranties. For example, the Senate Record indicates

that WaMu lacked effective internal controls, used shoddy lending practices, performed inadequate underwriting, failed to follow procedures, and committed critical errors. These practices by WaMu breached the Governing Documents, including, but not limited to, Sections 6(vi), (ix), (xvii), (xxii), (xxxii), (xxxvii), (xlviii), and (lviii) of the MLPA, which, in turn, triggered WaMu’s Repurchase and Notice Obligations with respect to the mortgage loans in the Trusts. See, e.g., Exhibits 6, 7.

(1) **The Senate Subcommittee Findings**

71. In addition to the extensive evidence that WaMu’s securitized loans breached the Representations and Warranties, the Senate Subcommittee also found evidence that WaMu discovered and/or had notice of these breaches, which, in turn, triggered its Repurchase and Notice Obligations, and that WaMu failed to notify RMBS investors and others who purchased the loans of these breaches. See Subcommittee Hearing, Hearing Ex. #1a, at p. 6; ¶ 69 supra.

72. The Senate Subcommittee made the following “findings of fact related to Washington Mutual Bank, and its parent holding company, Washington Mutual Inc.”

- a. **“Shoddy Lending Practices.** WaMu and its affiliate Long Beach Mortgage Company (“Long Beach”), used shoddy lending practices riddled with credit, compliance, and operation deficiencies to make tens of thousands of high risk home loans that too often contained excessive risk, fraudulent information, or errors.”
- b. **“Securitizing Delinquency-Prone and Fraudulent Loans.** At times, WaMu selected and securitized loans that it had identified as likely to go delinquent, without disclosing its analysis to investors who bought the securities, and also

securitized loans tainted by fraudulent information, without notifying purchasers of the fraud that was discovered.” Id.

73. These practices by WaMu breached the Governing Documents, including, but not limited to, Sections 6(xxii), (xxxii), (xxxvii), (xlviii), and (lviii) of the MLPA, which, in turn, triggered WaMu’s Repurchase and Notice Obligations with respect to the mortgage loans in the Trusts. See, e.g., Exhibits 6, 7.

74. Based upon: (a) the pervasiveness of such practices by WaMu, as found by the Senate Subcommittee; and (b) the high proportion of WaMu’s securitized mortgage loans that were sold to, or deposited in, the Trusts during the relevant time period, the Trustee has reason to believe that such practices affected mortgage loans sold to, or deposited in, the Trusts by WaMu and that, accordingly, many of the mortgage loans in the Trusts do not comply with the Representations and Warranties. Thus, WaMu breached the Representations and Warranties, which breaches had a material and adverse effect on the value of the mortgage loans in the Trusts or the interests of the Trusts therein, which, in turn, triggered WaMu’s Repurchase and Notice Obligations with respect to the mortgage loans in the Trusts.

75. The extent of such practices by WaMu and WaMu’s discovery and/or notice of the breaches of the Representations and Warranties is further evidenced by the following excerpt from the Senate Subcommittee’s report:

Over the years, both Long Beach and Washington Mutual were the subject of repeated criticisms by the bank’s internal auditors and reviewers, as well as its regulators, OTS and the FDIC, for deficient lending and securitization practices. Long Beach loans repeatedly suffered from early payment defaults, poor underwriting, fraud, and high delinquency rates. Its mortgage backed securities

were among the worst performing in the marketplace. In 2003, for example, Washington Mutual stopped Long Beach's securitizations and sent a legal team for three months to address problems and ensure its securitizations and whole loan sales were meeting the representations and warranties in Long Beach's sales agreements.

In 2005, Long Beach had to repurchase over \$875 million of nonperforming loans from investors, suffered a \$107 million loss, and had to increase its repurchase reserve by nearly \$75 million. As a result, Long Beach's senior management was removed, and Long Beach's subprime lending operations were made subject to oversight by Washington Mutual's Home Loans Division. Despite those changes, early payment defaults and delinquencies surged again in 2006, and several 2007 reviews identified multiple lending, credit, and appraisal problems. By mid-2007, Washington Mutual shut down Long Beach as a separate entity and took over its subprime lending operations. At the end of the year, a Long Beach employee was indicted for having taken kickbacks to process fraudulent or substandard loans.

In addition to problems with its subprime lending, Washington Mutual suffered from lending and securitization deficiencies related to its own mortgage activities. It received, for example, repeated criticisms for unsatisfactory underwriting procedures, loans that did not meet credit requirements, and loans subject to fraud, appraisal problems, and errors. For example, a 2005 internal investigation found that loans originated from two top loan producing offices in southern California contained an extensive level of fraud caused primarily by

employees circumventing bank policies. Despite fraud rates in excess of 58% and 83% at those two offices, no steps were taken to address the problems, and no investors who purchased loans originated by those offices were notified in 2005 of the fraud problem. In 2006, securitizations with elevated delinquency rates were found to contain lower quality loans that did not meet the bank's credit standards. In 2007, fraud problems resurfaced at the southern California offices, and another internal review of one of the offices found a fraud rate of 62%. In 2008, the bank uncovered evidence that employees at still another top producing loan office were 'manufacturing' false documentation to support loan applications. A September 2008 internal review found that loans marked as containing fraudulent information had nevertheless been securitized and sold to investors, identifying ineffective controls that had "existed for some time." Subcommittee Hearing, Hearing Ex. #1a, at p. 4.

(2) **The Senate Record**

76. The Senate Record, which is replete with internal WaMu documents, indicates that WaMu lacked effective internal controls, used shoddy lending practices, performed inadequate underwriting, failed to follow procedures, and committed critical errors in its mortgage origination and securitization. These practices by WaMu breached the Governing Documents, which, in turn, triggered WaMu's Repurchase and Notice Obligations.

77. By way of example, the following excerpts from the Senate Record evidence WaMu's breaches of the Governing Documents, including but not limited to, Sections 6(xxii), (xxxii), and (lviii) of the MLPAs (see Exhibit 6):

- a. “In its examinations from 2004 to 2008, the OTS noted that WaMu did not have effective controls in place to ensure proper risk management. Risk management was especially important in the case of WaMu because of its high-risk lending strategy, significant and frequent management changes, corporate reorganizations, and significant growth. Further, when OTS pointed out weaknesses in WaMu’s internal controls, WaMu management did not always take action to resolve those weaknesses.” Offices of Inspector General, Department of the Treasury and Federal Deposit Insurance Corporation, Evaluation of Federal Regulatory Oversight of Washington Mutual Bank, Report No. EVAL-10-002, April 2010 (the “Evaluation Report”), at p. 12.
- b. A WaMu audit of Long Beach found that “the overall system of risk management and internal controls has deficiencies related to multiple critical origination and underwriting processes,” and that “[t]hese deficiencies require immediate effective corrective action to limit continued exposure to losses.” Subcommittee Hearing, Hearing Ex. #1d.
- c. An April 17, 2006 WaMu audit of Long Beach found that “[r]elaxed credit guidelines, breakdowns in manual underwriting processes, and inexperienced subprime personnel . . . coupled with a push to increase loan volume and the lack of an automated fraud monitoring tool, exacerbated the deterioration in loan quality.” Id.
- d. A September 21, 2005 WaMu audit of Long Beach found that “[i]n 24 of 27 (88%) of the refinance transactions reviewed, policies established to preclude

origination of loans providing no net tangible benefit to the borrower were not followed.” Id.

- e. An email from the Senior Credit Risk Officer of Corporate Credit Review in December 2006 noted the findings from a monthly test of 275 loans, 15 days after closing: “Appraisal deficiencies Material misrepresentations Legal documents were missing or contained errors or discrepancies Credit evaluation or loan decision errors” The email added that “deterioration was accelerating in recent vintages with each vintage since 2002 having performed worse than the prior vintage.” The email prompted the Executive Vice President and Chief Enterprise Risk Officer to write that “Long Beach represents a real problem for WaMu,” and express concern that “Credit Review may seem to have been standing on the sidelines while problems continue.” Id., Hearing Ex. #16.
- f. A credit review report “disclosed that [Long Beach]’s credit management and portfolio oversight practices were unsatisfactory. . . . Approximately 4,000 of the 13,000 loans in the warehouse had been reviewed” and “of these, approximately 950 were deemed saleable, 800 were deemed unsaleable, and the remainder contained deficiencies requiring remediation prior to sale.” Furthermore, “[o]f 4,500 securitized loans eligible for foreclosure, 10% could not be foreclosed due to documentation issues.” Id., Hearing Ex. #8b.
- g. An OTS examiner “tried to object to so-called NINA loans – meaning loans in which ‘No Income and No Asset’ numbers are required to be provided by the borrower. An OTS policy official agreed, writing in a 2007 email that NINA loans are ‘collateral dependent lending and deemed unsafe and unsound by all the

agencies.’” Opening Statement of Senator Carl Levin Before the U.S. Senate Permanent Subcommittee on Investigations, Wall Street and the Financial Crisis: The Role of Bank Regulators, April 16, 2010 (“Levin Statement”).

- h. Another example of WaMu’s breaches of the Representations and Warranties involves WaMu’s flagship product, the Option Adjustable Rate Mortgage: “WaMu engaged in a host of shoddy lending practices that vastly increased the risks associated with its Option ARMs, such as permitting virtually every Option ARM borrower to make minimum payments which resulted in negatively amortizing loans in which the loan principal actually increased over time. Washington Mutual relied on rising house prices and refinancing to avoid payment shock and loan defaults.” Id.
- i. In addition, “WaMu and Long Beach too often steered borrowers into home loans they could not afford, allowing and encouraging them to make low initial payments that would be followed by much higher payments, and presumed that rising home prices would enable those borrowers to refinance their loans or sell their homes before the payments shot up.” Subcommittee Hearing, Hearing Ex. #1a, at p. 6.
- j. Moreover, loan officers and processors were paid based on volume, not the quality of their loans, and were paid more for issuing higher risk loans. Loan officers and mortgage brokers were also paid more when they got borrowers to pay higher interest rates, even if the borrower qualified for a lower rate – a practice that enriched WaMu in the short-term, but made defaults more likely down the road. See id., at pp. 4-5.

- k. “(High) Repeat Issue – Underwriting guidelines established to mitigate the risk of unsound underwriting decisions are not always followed and decisioning methodology is not always fully documented.” Id., Hearing Ex. #19, at p. 3.
- l. A November 1, 2005 internal WaMu Long Beach “Post Mortem” also found that “[u]nderwriting guidelines are not consistently followed and conditions are not consistently or effectively met.” LBMC Post Mortem – Early Findings Read Out, November 1, 2005, at p. 1. That same report found that only 1% of first payment defaults were unavoidable, and that 60% of first payment defaults “could have been prevented had current policy, procedures and guidelines been better executed.” Id., at p. 2.

78. The Senate Record also evidences that WaMu did not follow standard residential appraisal methods, and breached the Representations and Warranties, including, but not limited to, Section 6(xxxiii) of the MLPAs (see Exhibit 6): “WaMu’s review of appraisals establishing the value of single family homes did not always follow standard residential appraisal methods because WaMu allowed a homeowner’s estimate of the value of the home to be included on the form sent from WaMu to third-party appraisers, thereby biasing the appraiser’s evaluation.” Evaluation Report, at p.11.

79. WaMu’s shoddy lending practices and its securitization of loans that were likely to go delinquent greatly increased the risks associated with those loans. As Steve Rotella, WaMu’s former president and chief operating officer, wrote to Kerry Killinger, WaMu’s former chairman and chief executive officer: “Here are the facts: the portfolio (total serviced) is up 46% YOY through March but our delinquencies [sic] are up 140% and foreclosures close to

70%.” Mr. Rotella summarized by telling his boss “[i]t is ugly.” Subcommittee Hearing, Hearing Ex. #11.

80. Moreover, after September 25, 2008, the Trusts have experienced a substantial increase in delinquencies giving rise to foreclosures or other remedial activity by WaMu as Servicer, as well as an increase in realized losses to the Trusts.

D. WaMu’s Breaches of the Governing Documents

81. Based on, among other things, the Senate Subcommittee findings and the Senate Record, and given that the Primary Trusts constitute a significant percentage of the total number of securitizations by WaMu during the relevant time period, the Trustee has reason to believe that: (i) WaMu breached the Representations and Warranties, which breaches had a material and adverse effect on the value of the mortgage loans in the Trusts or the interests of the Trusts therein; (ii) WaMu discovered and/or had notice of those breaches, which triggered WaMu’s Notice and Repurchase Obligations; (iii) WaMu breached its Repurchase and Notice Obligations by failing to cure the breach of the Representations and Warranties in all material respects, repurchase the mortgage loans at a specified repurchase price, or substitute for the affected mortgage loans upon discovery or receipt of notice of those breaches; and (iv) WaMu breached and continues to breach its obligations in respect of the Trustee’s Access Rights. However, because WaMu has denied the Trustee access to the loan-level books and records, and information concerning the mortgage loans in the Trusts, the Trustee is unable to specifically identify particular mortgage loans in the Trusts that breached particular Representations and Warranties or for which the Notice and/or Repurchase Obligations have been triggered and breached.

82. To date, WaMu has not provided the Trustee with notice of any breaches of Representations and Warranties giving rise to Repurchase Obligations, except with respect to certain mortgage loans repurchased from certain Trusts soon after the Trusts were formed. In addition, the Trustee has been denied access to WaMu's records and other information concerning the mortgage loans in the Trusts, and WaMu has failed to grant the Trustee such access on the stated basis, among others, that the Access Rights have not been triggered because the Trustee and investors have presented no evidence that WaMu has breached its obligations (including the Notice Obligations). Indeed, despite numerous requests to WaMu – including, most recently on June 7, 2010, June 9, 2010, June 11, 2010, and August 16, 2010 – the Trustee has not been afforded its contractually required access to WaMu's records and other information concerning the mortgage loans in the Trusts.

83. WaMu has thus created a “Catch 22” situation, asserting that the Trustee cannot seek to enforce Repurchase Obligations because it lacks evidence that WaMu breached Representations and Warranties with respect to specific mortgage loans, and also cannot exercise Access Rights to acquire such evidence of a breach because, according to WaMu, such exercise is not “reasonable” without evidence of a breach.

84. In sum: (i) WaMu breached the Representations and Warranties, which breaches had a material and adverse effect on the value of the mortgage loans in the Trusts or the interests of the Trusts therein; (ii) WaMu discovered and/or had notice of those breaches, which triggered WaMu's Notice and Repurchase Obligations; (iii) WaMu breached its Notice and Repurchase Obligations; and (iv) WaMu breached and continues to breach its obligations in respect of the Trustee's Access Rights.

85. As a direct and proximate result of the breaches of contract set forth in this Complaint, the Primary Trusts have incurred losses estimated by the Trustee, based on the limited information available to it, to range from approximately \$6 billion to \$10 billion, with such losses continuing to accrue. In addition, as a direct and proximate result of the breaches of contract set forth in this Complaint, the Secondary Trusts have also been damaged because their performance is dependent, in whole or in part, on the performance of the Primary Trusts.

E. The FDIC's and JPMC's Contentions Regarding Successor Liability

86. Upon the FDIC's appointment as receiver for WMB, on September 25, 2008, the FDIC as receiver for WMB, the FDIC in its corporate capacity, and JPMC entered into the PAA. The PAA is incorporated by reference and attached hereto as Exhibit 2. Section 2.1 of the PAA provides:

“Subject to Sections 2.5 and 4.8, the Assuming Bank expressly assumes at Book Value (subject to adjustment pursuant to Article VII) and agrees to pay, perform, and discharge, all of the liabilities of the Failed Bank which are reflected on the Books and Records of the Failed Bank as of Bank Closing, including the Assumed Deposits and all liabilities associated with any and all employee benefit plans, except as listed on the attached Schedule 2.1, and as otherwise provided in this Agreement (such liabilities referred to as “Liabilities Assumed”). Notwithstanding Section 4.8, the Assuming Bank specifically assumes all mortgage servicing rights and obligations of the Failed Bank.”

87. Section 3.1 of the PAA provides that JPMC purchased “all mortgage servicing rights and obligations” of WaMu; and Schedule 2.1 of the PAA sets forth “Certain Liabilities Not Assumed” by JPMC. The list of liabilities not assumed by JPMC pursuant to the PAA does

not include or reference any liabilities or obligations arising under the Governing Documents, including, without limitation, WaMu's obligations as Seller, Depositor, and/or Servicer.

88. The FDIC contends that it transferred to JPMC all of the obligations and liabilities relating to the Trusts at issue in this action. In its motion to dismiss (pp. 18-19), the FDIC states: "Under the unambiguous terms of the [PAA], as well as FIRREA, all risk of liability to DBNTC or the Trusts is borne by JPMC, not FDIC Receiver."

89. More specifically, the FDIC contends in its motion to dismiss (p. 19) that: "As the structure of the [PAA] makes clear, WaMu's Trust-related seller and servicer obligations are among the liabilities that FDIC Receiver transferred to JPMC and that JPMC expressly agreed to assume. See [PAA] § 2.1."

90. JPMC contends that "JPMC acquired *only* liabilities 'reflected on the Books and Records of the Failed Bank as of Bank Closing' and *only* if and to the extent they had a 'Book Value.'" Letter from Stacey R. Friedman to Robin A. Henry dated August 25, 2010, at p. 1.

91. JPMC further contends that "[a]ll other liabilities of Washington Mutual Bank, *including the DBNTC liabilities*, remain with the Federal Deposit Insurance Corporation as receiver for the failed bank." Id. (emphasis added).

CLAIMS FOR RELIEF

Count I **Breach of Contract**

92. The Trustee incorporates by reference all prior paragraphs as if they were fully set forth herein.

93. WaMu breached the Representations and Warranties, which breaches had a material and adverse effect on the value of the mortgage loans in the Trusts or the interests of the Trusts therein. WaMu discovered and/or had notice of these breaches, which triggered WaMu's

Notice and Repurchase Obligations. WaMu breached its Repurchase and Notice Obligations by failing to cure the breaches of the Representations and Warranties in all material respects, repurchase the mortgage loans at a specified repurchase price, or substitute for the affected mortgage loans upon discovery or receipt of notice of these breaches.

94. One or both of the FDIC and/or JPMC, as WaMu's successor-in-interest and/or successors-in-interest, is liable for WaMu's breaches of the Governing Documents.

95. Defendants, in their capacity or capacities as successor Servicer for WaMu, discovered and/or had notice of WaMu's breaches of the Representations and Warranties and so are liable to the Trusts for breach of the Notice Obligation and any resulting damages.

96. Having assumed and not repudiated the Governing Documents for the Trusts, the FDIC, as receiver for WMB, is liable for WaMu's breaches of the Governing Documents.

97. The Trust's and the Trustee's claims against the FDIC for breaches of these assumed contracts are entitled at least to administrative expense priority in the WMB receivership estate.

98. WaMu also continues to breach its obligations in respect of the Trustee's Access Rights by failing to provide the Trustee, and others, with access to the records and other information concerning the mortgage loans in the Trusts so that they could determine whether Repurchase Obligations exist with respect to particular mortgage loans in the Trusts.

99. These breaches have made it impossible for the Trustee or other parties-in-interest to the Trusts to enforce WaMu's Repurchase Obligations, including the enforcement mechanism of providing WaMu with notice of a breach with respect to, and demanding cure, substitution or repurchase of, specific mortgage loans included in the Trusts.

100. The Trustee has performed all of its obligations under the Governing Documents for the Trusts by performing services both before and after the appointment of the FDIC as receiver for WMB, and has not breached any such obligations or excused the performance by WaMu of any of its obligations under the Governing Documents.

101. As a direct and proximate cause of these breaches of contract, the Trusts have suffered and continue to suffer significant damages.

Count II
Declaratory Judgment

102. The Trustee incorporates by reference all prior paragraphs as if they were fully set forth herein.

103. The FDIC contends that under the PAA, as well as FIRREA, JPMC assumed from the FDIC, as receiver, all of WaMu's liabilities and obligations "as seller, servicer, sponsor or in any other capacity under the Governing [Documents]."

104. JPMC contends that under the PAA it did not assume WaMu's liabilities or obligations to the Trusts and the Trustee under the Governing Documents.

105. A justiciable controversy exists as to the rights and obligations of the FDIC and JPMC regarding whether, and to what extent, the FDIC and/or JPMC has successor liability for WaMu's breaches of the Governing Documents, as well as for WaMu's ongoing obligations to the Trusts and the Trustee under the Governing Documents, including, but not limited to, the Repurchase Obligations, the Notice Obligations, the Access Rights and the Indemnification Rights.

106. The Trustee seeks a declaratory judgment declaring: (i) which, or in the alternative, that both of, WaMu's two potential successors-in-interest – the FDIC or JPMC – succeed(s) to WaMu's liabilities for breaches of Governing Documents and WaMu's ongoing

obligations to the Trusts and the Trustee under the Governing Documents, including, but not limited to, the Repurchase Obligations, the Notice Obligations, the Access Rights and the Indemnification Rights, and (ii) the extent to which each of the FDIC or JMPC have assumed those liabilities and ongoing obligations.

WHEREFORE, the Trusts and the Trustee request the following relief from this Court:

- A. A judgment in their favor against JPMC, in an amount to be determined, plus pre-and post-judgment interest, costs of suit, and attorneys' fees; and/or
- B. in the alternative, against the FDIC, in an amount to be determined, plus pre-and post-judgment interest, costs of suit, and attorney's fees;
- C. a declaratory judgment declaring: (i) which, or in the alternative, that both of, WaMu's two potential successors-in-interest – the FDIC or JPMC – succeed(s) to WaMu's liabilities for breaches of Governing Documents and WaMu's ongoing obligations to the Trusts and the Trustee under the Governing Documents, including, but not limited to, the Repurchase Obligations, the Notice Obligations, the Access Rights and the Indemnification Rights, and (ii) the extent to which each of the FDIC or JMPC have assumed those liabilities and ongoing obligations;
- D. costs, expenses and attorneys' fees incurred by the Trustee in connection with this action; and
- E. such other and further relief as the Court may deem just.

JURY TRIAL DEMAND

The Trustee hereby demands a jury trial to the fullest extent allowed by law.

Dated: September 8, 2010
Armonk, NY

Respectfully submitted,

BOIES, SCHILLER & FLEXNER LLP

By: /s/ Robin A. Henry

Robin A. Henry (admitted pro hac vice)

Michael Endler (admitted pro hac vice)

Motty Shulman (admitted pro hac vice)

333 Main Street

Armonk, NY 10504

Phone: (914) 749-8200

Fax: (914) 749-8300

Tanya S. Chutkan (D.C. Bar No. 420478)

BOIES, SCHILLER & FLEXNER LLP

5301 Wisconsin Ave. NW #800

Washington, DC 20015

Phone: (202) 237-2727

Fax: (202) 237-6131

*Counsel for Plaintiff Deutsche Bank National Trust
Company, as Trustee for the Trusts listed in
Exhibits 1-A and 1-B, for all claims except with
respect to paragraph 97 of the Complaint.*

- and -

TALCOTT FRANKLIN P.C.

Talcott J. Franklin (D.D.C. Bar No. TX0078)

208 North Market Street, Suite 200

Dallas, Texas 75202

Phone: (214) 736-8730

Fax: (877) 577-1356

*Counsel for Plaintiff Deutsche Bank National Trust
Company, as Trustee for the Trusts listed in
Exhibits 1-A and 1-B.*

Certificate of Service

This is to certify that on September 8, 2010 the foregoing Amended Complaint was filed electronically with the Clerk of the Court via email and served upon all appearing parties and Counsel of record via email and Federal Express overnight mail at the below listed addresses.

By: /s/ Sara Clinton

Scott H. Christensen
HUGHES HUBBARD & REED, LLP
1775 I Street, NW
Suite 600
Washington, DC 20006
(202) 721-4644
Fax: (202) 721-4646
Email: christen@hugheshubbard.com

William Robert Stein
HUGHES HUBBARD & REED LLP
1775 I Street, NW
Washington, DC 20006-2402
(202) 721-4600
Fax: (202) 721-4646
Email: stein@hugheshubbard.com

Anne M. Devens
FEDERAL DEPOSIT INSURANCE CORPORATION
3501 Fairfax Drive
Room VS-D-7062
Arlington, VA 22207
(703) 562-2204
Email: adevens@fdic.gov

Jason Samuel Cohen
HUGHES HUBBARD & REED, LLP
1775 I Street, NW
Washington, DC 20006
(202) 721-4788
Email: cohenj@hugheshubbard.com

Jeffrey D. Wexler

LUCE, FORWARD, HAMILTON & SCRIPPS, LLP

601 South Figueroa Street

Suite 3900

Los Angeles, CA 90017

(213) 892-4910

Fax: (213) 452-8029

Email: jwexler@luce.com

Michael Hain Bierman

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

601 South Figueroa Street

Suite 3900

Los Angeles, CA 90017

(213) 892-4992

Fax: (213) 452-8032

Email: mbierman@luce.com