

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

Civil Action No. _____

GALENA STREET FUND, L.P.
Plaintiff,

v.

JURY TRIAL DEMANDED

WELLS FARGO BANK, N.A.,
Defendant.

COMPLAINT

For its Complaint against Wells Fargo Bank, N.A. (“Wells Fargo”), Plaintiff Galena Street Fund, L.P. (“Plaintiff”), through undersigned counsel, Reilly Pozner LLP, hereby alleges and states as follows:

INTRODUCTION

1. Plaintiff is an investor in certain residential mortgage-backed securities. Plaintiff brings this action against Wells Fargo for breach of fiduciary duty, breach of contract, breach of the duty of good faith and fair dealing, negligence, and unjust enrichment arising in Wells Fargo’s multiple capacities as trustee and servicer.

2. The losses for which Plaintiff brings this action are a consequence of improper servicing by both Wells Fargo and its predecessor servicer, Washington Mutual, as well as the result of Wells Fargo’s failure to perform its trusteeship with due care and in violation of its fiduciary and other legal duties, including the duty to avoid conflicts of interest.

PARTIES

3. Plaintiff Galena Street Fund, L.P. is a Cayman Islands exempted limited partnership. The general partners in Plaintiff are Galena Street Series A, L.P. (Delaware); Galena Street Series C, L.P. (Delaware), and Galena Street Series B, Ltd (Cayman Islands). The limited partner in Plaintiff is Braddock Financial Corporation (Delaware, with its principal place of business in Colorado).

4. Defendant Wells Fargo is a federally-chartered national bank with its home office located at 101 N. Phillips Avenue, Sioux Falls, South Dakota 57104. Wells Fargo is a citizen of South Dakota.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant 28 U.S.C. § 1331 because the controversy arises from transactions of a national bank that involve international or foreign banking operations as set forth in 12 U.S.C. § 632, and pursuant to 28 U.S.C. § 1332 because there is complete diversity between Plaintiff and its partners, on the one hand, and Defendant, on the other, and the amount in controversy exceeds the jurisdictional amount of \$75,000.

6. The Court has personal jurisdiction over Wells Fargo because Wells Fargo has corporate offices, bank branches, and an agent for service of process in Colorado, among other things, which constitute continuous and systematic business in Colorado and demonstrate Wells Fargo's purposeful availment of the benefit of doing business in Colorado. Wells Fargo also interacted directly with Plaintiff's Colorado-based investment manager, Braddock

Financial Corporation (“Braddock”), in connection with the investments and the dispute that form the specific basis of this action.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the acts or omissions that form the basis of the cause of action occurred within the district. Specifically, Braddock, which, in addition to being Plaintiff’s investment manager, is also a limited partner in Plaintiff and its attorney-in fact, is based in and has its principal place of business in Colorado. Braddock caused Plaintiff to purchase the at-issue certificates and corresponded and otherwise engaged with Wells Fargo and Washington Mutual Bank, FA (“WaMu”) with respect to the acts and omissions alleged herein in Colorado. Harm from the acts and omissions alleged herein was and continues to be suffered in Colorado.

GENERAL ALLEGATIONS

Overview of Residential Mortgage-Backed Securities

8. Plaintiff is an investor in certain securitized trusts holding mortgage loans, known as residential mortgage-backed securities or “RMBS.” A residential mortgage-backed security is a form of asset-backed security where cash-producing financial instruments, in this case mortgage notes—pursuant to which homeowners are required to make regular payments—and mortgages securing that obligation, are aggregated into pools and sold into trusts.

9. When people or institutions—like and including Plaintiff—invest in RMBS, they acquire the right to a portion of the homeowners’ mortgage payments and, as is relevant to this

case, the proceeds from mortgage insurance policies that are triggered when homeowners fail to make those payments. That right is reflected in certificates issued to investors, which is why RMBS investors are often referred to as “certificateholders.” The payments—whether from homeowners or mortgage insurers—are passed through a series of one or more servicers to a trustee appointed to administer the trusts, and are then paid to investors according to a predetermined formula called the trust waterfall.

10. The term “trust waterfall” reflects the fact that RMBS trusts are typically stratified in a hierarchy of classes or “tranches” based on the trust’s capital structure. Higher rated classes are called “senior”; lower rated classes are called “junior.” The lowest class is unrated. The contracts governing mortgage-backed securities provide detailed rules for how the trust’s proceeds and losses are allocated among the classes. Typically, though, proceeds from homeowner payments, servicer advances thereof, and other monies coming into the trust are paid in descending order of seniority. Similarly, when the trusts suffer losses, for example, because homeowners stop making payments and either there are no insurance policies to cover them or the servicer fails to properly apply for insurance and therefore does not receive the insurance proceeds, those losses are also allocated according to the waterfall but in the opposite direction. Basically, payments are dumped into the top of the waterfall and trickle down while losses are absorbed from the bottom up. Thus, the amount and timing of any given investor’s payment or loss is determined by that investor’s position in the waterfall.

11. Essential to this process are trustees and servicers, who administer their respective aspects of the RMBS. Trustees are appointed by the RMBS issuer—the bank or similar financial institution that created the RMBS by pooling mortgage loans and selling them to the trust that then holds them for the benefit of investors. The trustee’s job is to oversee the trust and the servicers. Its specific duties are laid out in Pooling and Servicing Agreements (“PSAs”) but state fiduciary law also imposes certain duties on trustees. Servicers manage the relationship with homeowners, collect and remit payments, and take action to mitigate or minimize losses that occur when homeowners stop paying their mortgages. Servicers’ duties are also laid out in servicing agreements, which frequently, including in this case incorporate other guidelines and industry standards.

12. In many securitizations—including the two at issue here—where homeowners do not make their payments, the servicers advance those payments to the trusts and later reimburse themselves from the proceeds of their loss mitigation efforts, such as foreclosure and mortgage insurance proceeds. However, servicing agreements and standards place limitations on when and to what extent these advances should be made.

Formation of the At-Issue Trusts

13. This case involves two mortgage-backed securities issued by Countrywide Home Loans, Inc. or its affiliated depositories (“Countrywide”): Reperforming Loan REMIC Trust Certificates, Series 2002-2 (the “Series 2002-2 Security”), and Reperforming Loan REMIC Trust Certificates, Series 2003-R1 (the “Series 2003-R1 Security”).

14. The loans Countrywide deposited into the trusts come from different sources. Countrywide acquired some of the mortgage loans in the Series 2002-2 Security and all of the mortgage loans in the Series 2003-R1 Security from WaMu through a Mortgage Loan Purchase and Sale Agreement (“Purchase and Sale Agreement”).

15. Pursuant to that agreement, all of the mortgage loans acquired from WaMu were insured by the Federal Housing Administration (“FHA”) or guaranteed by the Department of Veterans’ Affairs (“VA”).

WaMu’s (and Subsequently Wells Fargo’s) Duties as Servicer

16. Although WaMu sold the mortgage loans to Countrywide and Countrywide into the trusts, WaMu retained the right to service the mortgage loans it sold. This arrangement is known as “servicing retained,” as contrasted with “servicing released,” which occurs when the originating lender sells both the mortgage loans and the associated servicing rights.

17. Accordingly, when WaMu sold its loans to Countrywide, the parties entered into a Servicing Agreement regarding those loans. While the terms of that agreement and the other servicing standards incorporated into it speak for themselves, the gist of the Servicing Agreement for present purposes was that WaMu would be obligated to service the loans in accordance with Acceptable Servicing Procedures, defined as “those customary mortgage servicing practices of prudent mortgage lending institutions that service mortgage loans of the same type and quality as such Mortgage Loans in the jurisdiction where the related Mortgaged

Property is located,” and to act in the best interests of whoever owned the loans as they were sold and securitized.

18. Among the specific servicing obligations and restrictions set forth in the Servicing Agreement were the following:

- a. WaMu was obligated to collect all payments due under the mortgage loans, including taking actions to collect all payments not paid when due;
- b. WaMu was prohibited, in the absence of consent, to take any action that would adversely affect WaMu’s ability to collect payments under the FHA insurance or the VA guaranty;
- c. WaMu was entitled to withhold funds to pay its servicing fees, instead of distributing those funds to the trust, only under specifically defined circumstances; and
- d. WaMu was restricted from withholding funds from the trust to repay itself for servicing advances (payments to the trust in advance of the servicer’s expected receipt of funds from the servicing of the loans) except as specifically provided for in the Servicing Agreement.

19. The Servicing Agreement also expressly incorporated FHA and VA servicing guidelines.

20. In addition, industry standards explicitly made applicable by the Servicing Agreement prohibited WaMu from making any servicing advances that it knew would be unrecoverable.

21. On or about September 1, 2002, Countrywide entered into a Pooling and Servicing Agreement (“PSA”) with a number of parties regarding the Series 2002-2 Security.

22. That PSA created a trust fund that included some of the mortgage loans that were part of the Purchase and Sale Agreement between WaMu and Countrywide and contemplated that the beneficial interests in the trust fund would be sold in multiple classes of pass-through certificates.

23. On or about February 1, 2003, Countrywide entered a PSA with a number of parties regarding the Series 2003-R1 Security.

24. That agreement was similar in substance to the September 1, 2002 PSA and also created a trust that was made up of mortgage loans that were part of the Purchase and Sale Agreement between WaMu and Countrywide. The primary difference in the Series 2003-R1 PSA was that Countrywide’s rights under the WaMu Purchase and Sale Agreement were not assigned to the trustee.

25. At the same time that the PSAs were executed, Countrywide, Wells Fargo, and WaMu entered into a Reconstituted Servicing Agreement for each trust. (Plaintiff will refer to the original Servicing Agreement as modified by the Reconstituted Servicing Agreements as the “Servicing Agreement.”)

26. In those agreements, Countrywide assigned its interests under the original WaMu Servicing Agreement to Wells Fargo as trustee, and WaMu agreed to continue to service the loans under the terms of the original Servicing Agreement subject to certain modifications in the Reconstituted Servicing Agreements.

Wells Fargo's Duties as Trustee

27. Under both PSAs, Wells Fargo was appointed trustee.

28. The PSAs provided: "The entity serving as Trustee may have normal banking and trust relationships with the Depositor and its affiliates or the Master Servicer, Chase, Washington Mutual and their affiliates; provided, however, that such entity cannot be an affiliate of the Master Servicer, Chase or Washington Mutual other than the Trustee in its role as successor to the Master Servicer, Chase or Washington Mutual." "Washington Mutual" is defined to include its successors and assigns.

29. Wells Fargo was and remains required to administer the trusts in accordance with the terms of the PSAs pursuant to which the trusts were created, and must comply with other contractual or state law duties including the duty to perform its contractual duties with due care and the duty of loyalty, which includes the duty to avoid conflicts of interests.

30. Trusts, including the trusts at issue in this case, are created such that in most circumstances, only the trustee is empowered to protect the interests of investors vis-à-vis third parties. Accordingly, investors must rely on the trustee to safeguard their interests.

31. Wells Fargo accepted its applicable trusteeships under circumstances where it knew or should have known that investors—including Plaintiff—are generally unable to safeguard their own interests vis-à-vis third parties and that they (the trustees) have the power to enforce the trusts' rights against third parties.

Plaintiff's Positions in the Securities

32. On or about October 15, 2002, Plaintiff purchased 100% of the BB, B, and unrated classes of the Series 2002-2 Security.

33. On or about April 3, 2003, Plaintiff purchased 100% of the BB, B, and unrated classes of the Series 2003-R1 Security.

34. Plaintiff's investment in the Series 2002-2 and 2003-R1 Securities appeared safe given that the loans making up the securities' trusts were all subject to either FHA insurance or VA guarantees.

35. Plaintiff relied on the FHA insurance and VA guarantees when it decided to purchase its interests in the Series 2002-2 and 2003-R1 Securities.

36. Plaintiff relied on the contractual and other legal obligations of WaMu and Wells Fargo with respect to the servicing of loans and trusteeship over the trusts when it decided to purchase its interests in the Series 2002-2 and 2003-R1 Securities.

37. Plaintiff's reliance was justified in light of the information provided in the offering materials and other governing agreements.

Nature of the Case

38. This case arises from improper servicing by Wells Fargo and its predecessor servicer, WaMu, and its failure in its additional capacity as trustee to protect Plaintiff against losses from the improper servicing. In essence, WaMu made servicing advances for missed borrower payments but then mismanaged the insurance claim process such that it was not eligible to be reimbursed from insurance proceeds. As a result, WaMu reimbursed itself from trust assets and then passed the losses on to the trusts. Plaintiff implored Wells Fargo, as trustee, to prevent WaMu from reimbursing itself and imposing losses on the trusts in this manner but not only did Wells Fargo fail to act, it compounded the harm by passing on the losses itself when it later bought WaMu's servicing portfolio.

39. Among the problems with WaMu's and Wells Fargo's handling of the advances, reimbursements, and write downs is this: consistent with the waterfall described above, when the wrongfully paid servicing advances came into the trusts, they were paid from the top down, meaning that investors holding senior classes of bonds were paid first. But when the losses were passed to the trusts, they were absorbed from the bottom up, wiping out Plaintiff's entire investment. Had WaMu and Wells Fargo simply reversed the advances, that is, taken them from the investors who received them rather than leaving them with the investors who received them and taking them from Plaintiff's holdings, all investors would have been left in the position they should have been in—minus the fact that WaMu should have perfected the insurance claims in the first place. In addition, when WaMu withdrew its reimbursements from

the trusts, it apparently made a number of duplicate withdrawals. As a consequence, Plaintiff lost millions of dollars.

40. At the same time that WaMu was reimbursing itself for advances it never should have made, another process was underway that helps explain why the trustee did nothing to stop WaMu. The trustee, Wells Fargo, was in the process of buying WaMu's servicing portfolio, including servicing of the WaMu-originated loans in the at-issue trusts. Not only was this transaction prohibited by the PSAs (as cited above) but it placed Wells Fargo in multiple conflicts of interest vis-à-vis its investor-beneficiaries including with respect to (a) the effect of WaMu's reimbursements on the value and price of the asset Wells Fargo was buying, (b) its power (as trustee) to determine whether it (as servicer) would assume or reject WaMu's servicing liabilities, including the liabilities at issue in this case, (c) its decision to continue passing losses on to the trusts over which it was trustee after it took over WaMu's servicing, and (d) its failure to assist Plaintiff or take any meaningful action to remediate the harm suffered as a consequence of WaMu's and its own improper servicing.

41. Wells Fargo's conflict of interest continues to this day—more than five years later—despite its acknowledgment in July 2011 that it is presented with what it calls a *potential* conflict of interest and commitment to expedite the process of finding a successor trustee. Instead, Wells Fargo remains both the trustee for the two at-issue trusts and the servicer for many of the loans in those trusts.

42. In addition to its own servicing liability – whether for its own actions or those it inherited from WaMu – there is another explanation for Wells Fargo’s reluctance to pursue remedies for Plaintiff. In a recent Minnesota court filing, Wells Fargo asked that it be replaced as trustee so that a successor could pursue repurchase claims against an unaffiliated originator for selling defective loans through the secondary mortgage market to trusts over which Wells Fargo was trustee. Wells Fargo claimed that because it too originated and securitized mortgage loans, it could be the target of similar litigation, and therefore was faced with a potential conflict of interest. That same potential conflict presented itself in this case when Plaintiff demanded that Wells Fargo act against WaMu who, like Wells Fargo, originated loans and, at times, retained the servicing rights after selling the loans upstream. Wells Fargo indeed filed a completely ineffective lawsuit (for access to the loan files it should have already had) against its fellow originator/servicer WaMu, resulting a worthless default judgment. This is virtually identical to the kind of suit Wells Fargo now believes presents at least a potential conflict of interest.

43. By this action, Plaintiff seeks recovery only for its own losses attributable to the conduct pleaded herein. It does not file derivatively on behalf of the trusts or any other investors nor is it required to. Indeed, other investors in the at-issue trusts are or were the beneficiaries of Wells Fargo’s and/or its predecessor’s improper administration of the trusts, such that a derivative action has the potential to further unjustly enrich them at Plaintiff’s

expense. Nor is Plaintiff limited by the so-called no-action clauses of the PSAs, since it brings this action against its trustee and because the trustee labors under a conflict of interest.

WaMu's Breaches of the Servicing Agreement

44. WaMu failed to service the loans and remit funds to the trusts established by the September 1, 2002 and February 1, 2003 PSAs in a manner consistent with the Servicing Agreement and the industry standards made applicable to WaMu under the terms of the Servicing Agreement.

45. If an underlying mortgage became delinquent, WaMu was obligated to attempt to recover the amounts from FHA, as insurer, or VA, as guarantor. However, in violation of its legal obligations, WaMu failed to properly make claims to FHA and VA, resulting in the rejection of claims that FHA and VA otherwise would have paid.

46. As a result, the "loss severity" (defined as the total proceeds from the FHA insurance and VA guarantees, less any non-qualified expenses of the workout procedure, divided by the loan balance at foreclosure) for loans serviced by WaMu was exceptionally high. Specifically, WaMu-serviced loans in the Series 2002-2 and 2003-R1 Securities have a weighted average loss severity more than double that of the Countrywide-serviced loans in the same trusts and of the industry average of 3.5% to 4.5% on FHA/VA loans.

47. Nevertheless, after it failed to make or made improper claims to FHA and VA, WaMu advanced to the designated trust (for distribution to investors) the recoveries that would

only have been expected if FHA and VA claims were properly made, in violation of the Servicing Agreement and applicable industry standards.

48. WaMu made these advances even though a prudent servicer would not have done so, thereby misallocating cash among the investors in the trusts and causing incorrect and unnecessary losses to Plaintiff as a junior certificateholder.

49. WaMu continued to advance principal and interest beyond the receipt (or after FHA/VA's rejection) of Part A and Part B insurance proceeds from FHA or VA, despite the fact that it knew or should have known that the servicing advances would be unrecoverable.

50. WaMu delayed claims to FHA and VA thereby reducing or eliminating the recovery of Part A and Part B insurance proceeds, exacerbating the negative effects of the improper advancement of principal and interest between receipt of the proceeds.

51. Because holders of senior certificates received payments first under the waterfall, these actions led to early and improper receipt of principal by the investors with the senior interests in the securities, to the detriment of Plaintiff.

52. WaMu failed to restore the amounts it withheld from the trusts to repay itself by recapturing the improper advances from the senior certificateholders who received them, or by properly withholding such amounts from subsequent distributions to those investors.

53. Instead, WaMu wrongfully wrote down the principal balance of the pool of mortgages by stating the improper advances as realized losses. In one single month, for example, WaMu wrote down the principal balance of one of the pools by declaring over \$1.9

million in realized losses, an increase by more than 113 times the amount of the losses realized in the previous month.

54. Furthermore, based on information developed through a review of servicing records, Plaintiff believes that WaMu made duplicate reimbursement claims against the trusts for the same advances.

55. As a result of such write-downs, the cash available for distribution to Plaintiff as a junior certificateholder was directly reduced by the amount of money improperly advanced to senior certificateholders, causing a direct monetary loss only to Plaintiff as a junior certificateholder.

56. As a result of such write-downs, the balances of Plaintiff's certificates were prematurely reduced to zero, or "wiped out."

57. Once a certificate is wiped out, the certificateholder no longer receives any distributions from the trust.

58. Through the acts described above, WaMu caused Plaintiff as a junior certificateholder to incur unnecessary losses due to improper advances, poor and improper handling of the FHA/VA insurance proceeds owing to the trusts, improper withholding of money from the trusts to repay itself for improper advances, duplicate reimbursement claims to the trusts, and improper write-down of the principal balance of the pool of loans in the trusts, among other things.

59. Plaintiff has incurred millions of dollars in damages as a result.

Wells Fargo's Purchase of WaMu's Servicing Resulting in a Conflict of Interest

60. In a Servicing Rights Purchase and Sale Agreement dated as of July 17, 2006, Wells Fargo bought and was assigned certain of WaMu's servicing rights.

61. Upon information and belief, Wells Fargo's purchase included the rights to service the loans that WaMu had previously serviced in the Series 2002-2 and Series 2003-R1 Securities.

62. After Wells Fargo's purchase of WaMu's servicing rights, Wells Fargo began servicing the loans that WaMu had previously serviced in the Series 2002-2 and Series 2003-R1 Securities.

63. Under its agreement with Wells Fargo, which only became public much later, WaMu was to deliver to Wells Fargo the servicing files for each affected loan—which WaMu warranted were complete—within three days after the applicable transfer date.

64. WaMu was obligated to work with the investor (here, loan owner or trustee) on each servicing agreement to have the servicing rights assigned from WaMu to Wells Fargo.

65. Wells Fargo would assume WaMu's contractual obligations to be performed after the sale date "and prior to the Sale Date to the extent required by the applicable Investor to obtain the related Investor Consent . . ."

66. The "Investor" with respect to the Series 2002-2 and Series 2003-R1 Securities was the trustee, Wells Fargo, who had been assigned Countrywide's rights under the Servicing Agreement.

67. Therefore, with respect to the Series 2002-2 and Series 2003-R1 Securities, WaMu would be obligated to negotiate with Wells Fargo as trustee the extent to which Wells Fargo as servicer would assume WaMu's considerable servicing liabilities.

68. To date, Wells Fargo has not disclosed the terms, if any, of its assumption of WaMu's servicing with respect to the loans in the Series 2002-2 and Series 2003-R1 Securities. But, it either assumed WaMu's liabilities or breached its fiduciary duty to avoid conflicts of interest when it did not.

Wells Fargo's Failure to Prevent the Improper Reimbursements

69. In late 2006, Plaintiff—through Braddock—implored Wells Fargo to use its authority as trustee to prevent WaMu from improperly reimbursing itself and passing the losses on to the trusts.

70. By that time, Wells Fargo had already entered into the aforementioned agreement to purchase WaMu's servicing of the underlying loans and WaMu was passing unprecedented losses onto the trusts and specifically to Plaintiff.

71. Wells Fargo took no action to prevent WaMu from reimbursing itself from the trusts' assets or passing the losses on to the trusts.

72. As a consequence of its failure to prevent or minimize WaMu's self-reimbursement and passing of losses on to the trusts, Wells Fargo acquired less of WaMu's servicing-related liability and debt than it otherwise would have.

73. Indeed, after assuming WaMu's servicing duties, Wells Fargo continued to pass losses from the same improper servicing advances and reimbursements to the trusts.

Wells Fargo's Sham Suit Against WaMu

74. In December 2006, Plaintiff (through Braddock) informed Wells Fargo, in its capacity as trustee of the Series 2002-2 and 2003-R1 Securities, of its belief that WaMu had violated the Servicing Agreement, as described above and that Plaintiff had suffered damages as a result.

75. In response, Wells Fargo claimed that it needed to review WaMu's servicing records, but could not.

76. The Servicing Agreement clearly sets forth Wells Fargo's right to demand and to review WaMu's servicing records, providing that the trustee, has the "right, at its expense, to (i) examine and audit the Servicer's books of account, records, reports, and other reports relating to . . . (x) the performance by the Servicer of its obligations and duties under the Agreement, or (y) the Mortgage Loans, (ii) make copies and extracts therefrom, and (iii) discuss the affairs, finances, and accounts of the Servicer relating to such performance with the Servicer's officers and employees, all at such times and places, and with such frequency, as may be reasonably requested." (These rights are referred to herein as the "examination rights.")

77. Wells Fargo did not disclose that WaMu was also contractually obligated to provide it with the servicing records with respect to the loans for which Wells Fargo had assumed servicing, whether active or paid-off.

78. On September 18, 2007, Wells Fargo filed suit against WaMu in federal district court for the Central District of California seeking specific performance of WaMu's obligation to permit Wells Fargo to review the servicing records, in accordance with Wells Fargo's examination rights under the Servicing Agreement.

79. On January 14, 2008, the federal district court dismissed the suit for lack of subject-matter jurisdiction. On January 24, 2008, Wells Fargo re-filed its suit for specific performance in Los Angeles Superior Court.

80. In its Complaint, Wells Fargo admitted its duty to review servicing files, pleading that without court relief, "Wells Fargo cannot fulfill its obligations to the Trust beneficiaries [i.e. the certificateholders such as Plaintiff] to review the servicing records of Washington Mutual relating to the mortgage loans owned by the Trust."

81. On September 25, 2008 WaMu was seized by the FDIC and placed in receivership. JPMorgan Chase Bank, N.A. ("Chase") then entered into a "Whole Bank" Purchase and Assumption Agreement with the FDIC and WaMu whereby it assumed most liabilities of WaMu, but had 120 days to decide which WaMu contracts (such as servicing agreements) it would assume. WaMu's holding company filed for bankruptcy protection shortly thereafter.

82. On July 16, 2009, Wells Fargo added Chase as a defendant to its suit against WaMu.

83. In response to Wells Fargo's motion for summary judgment with respect to its examination rights, Chase stated that Wells Fargo had already obtained the vast majority of the servicing files it sought when it purchased WaMu's servicing rights in 2006. Chase provided an unsigned execution copy of the agreement between WaMu and Wells Fargo that it found in WaMu's files. Chase also represented that it had already produced to Wells Fargo the servicing files for more than 400 loans that had liquidated before Wells Fargo's purchase of WaMu's servicing in 2006.

84. WaMu's attorneys asserted on June 17, 2010 that Chase had exercised its option in the WaMu Purchase and Assumption Agreement to reject the servicing agreements relating to the Series 2002-2 and Series 2003-R1 loans, and so Chase could not be liable on those agreements.

85. On June 17, 2010, Wells Fargo voluntarily dismissed Chase as a defendant.

86. Wells Fargo proceeded to obtain a meaningless default judgment for specific performance of its examination rights against WaMu, which at that point was an empty shell—the FDIC was its receiver, and Chase was its successor for most purposes.

87. In arguing to obtain this worthless remedy on June 21, 2010, Wells Fargo's attorneys argued that "[i]f Wells Fargo does not obtain judgment against WaMu, Wells Fargo could be exposed to claims by beneficiaries of the trust (which beneficiaries are investors in the mortgage loan pools) that Wells Fargo failed to protect the beneficiaries' interest."

88. All the while, it was Wells Fargo who had, or should have had, possession of (as servicer) if not the legal right to access (as trustee) all of the servicing files that it was suing WaMu to inspect.

89. At the same time, Wells Fargo was representing to Plaintiff that it could not assess Plaintiff's claims that WaMu had improperly serviced loans in the Series 2002-2 and Series 2003-R1 Securities because it did not have the servicing files for those loans.

90. After obtaining the few servicing files from Chase, Wells Fargo provided them to Plaintiff to review for servicing errors. However, that production, which took well over two years to obtain, contained the servicing files for only 419 of the 23,934 mortgage loans at issue—less than 2% of the files relevant to Plaintiff's claims.

91. Nevertheless, Plaintiff's review of that limited sample of files revealed that WaMu passed excessive losses and, in some cases, duplicates losses, on to the trusts.

Wells Fargo's Loss or Destruction of Servicing Files

92. In connection with Wells Fargo's production of the less than 500 servicing files it had obtained from Chase, Plaintiff also learned for the first time that certain files could not be produced because they were either lost or destroyed by Wells Fargo.

93. The servicing files are or were likely to contain additional evidence of Wells Fargo's liability.

94. On information and belief, some or all of the servicing files were lost or destroyed after anticipation and/or commencement of litigation related to the matters set forth herein, of which Wells Fargo was a party or was aware.

FIRST CAUSE OF ACTION
(For Breach of Fiduciary Duty)

95. Plaintiff incorporates by reference the foregoing allegations as though fully set forth herein.

96. As trustee of the Series 2002-2 and 2003-R1 Securities, Wells Fargo owed and continues to owe fiduciary duties to the trusts and the certificateholders of those trusts, including (a) the duty of loyalty, (b) the duty to avoid conflicts of interest, (c) the duty of impartiality among trust beneficiaries, (d) the duty of care, (e) the duty to prevent the loss of trust assets, and (f) the duty of full disclosure.

97. Wells Fargo, in its capacity as trustee, breached its fiduciary duties to Plaintiff when it labored under a conflict of interest and, as set forth more fully above, failed to assume or compensate Plaintiff for WaMu's servicing-related liability, permitted itself to act as servicer despite its contractual ineligibility, passed losses for improper servicing advances and reimbursements on to the trusts, failed to prevent WaMu from improperly reimbursing itself for servicing advances and passing the associated losses on to the trusts, failed to disclose to Plaintiff that it had or should have had access to documentation necessary to investigate WaMu's improper servicing activities, failed to pursue remedies on behalf of Plaintiff or

otherwise aid Plaintiff in its effort to pursue remedies, and lost or destroyed documentation likely to contain evidence of WaMu's and/or its own servicing-related liability.

98. Wells Fargo's breach of its fiduciary duties to Plaintiff caused harm to Plaintiff.
99. Plaintiff suffered damages.

SECOND CAUSE OF ACTION
(For Breach of Contract)

100. Plaintiff incorporates by reference the foregoing allegations as though fully set forth herein.

101. Wells Fargo and WaMu entered into binding and valid contracts as set forth above, including the Servicing Agreement.

102. Plaintiff became a party to the Servicing Agreement and/or became an intended and/or foreseeable third-party beneficiary of that agreement when it purchased the unrated, B-rated, and BB-rated interests in the Series 2002-2 and Series 2003-R1 Securities.

103. Plaintiff fully performed its obligations when paid for its certificates in the Series 2002-2 and Series 2003-R1 Securities.

104. Wells Fargo and/or WaMu breached the Servicing Agreement by failing to properly administer insurance claims, improperly advancing sums to senior certificateholders in the Series 2002-2 and Series 2003-R1 trusts, reimbursing itself for its improper servicing advances and then writing down the principal balances of the loans in the trusts' pools, as set forth in more detail above.

105. Wells Fargo's and WaMu's breaches of the Servicing Agreement harmed Plaintiff.

106. Plaintiff suffered damages.

107. Wells Fargo assumed or should be deemed to have assumed WaMu's liabilities under the Servicing Agreement, including the liability for WaMu's breaches described above, either in its contract assuming such servicing, or as a matter of law and equity, because any failure to do so was in breach of Wells Fargo's fiduciary duties.

THIRD CAUSE OF ACTION
(For Breach of the Implied duty of Good Faith and Fair Dealing)

108. Plaintiff incorporates by reference the foregoing allegations as though fully set forth herein.

109. The duty of good faith and fair dealing is implied in every contract.

110. Wells Fargo itself—as trustee and servicer—and as successor servicer to WaMu, breached the implied duty of good faith and fair dealing when it deprived Plaintiff of the benefits to which it was entitled under the governing agreements, including the PSAs and the Servicing Agreement, as set forth more fully above.

111. Wells Fargo's breach of the implied duty of good faith and fair dealing harmed Plaintiff.

112. Plaintiff suffered damages.

FOURTH CAUSE OF ACTION
(For Negligence)

113. Plaintiff incorporates by reference the foregoing allegations as though fully set forth herein.

114. Wells Fargo and/or its predecessor, WaMu, failed to use the degree of care that a reasonably prudent trustee and/or servicer would use in the same circumstances.

115. Wells Fargo's failure to adhere to the requisite standard of care caused harm to Plaintiff.

116. Plaintiff suffered damages.

FIFTH CAUSE OF ACTION
(For Unjust Enrichment)

117. Plaintiff incorporates by reference the foregoing allegations as though fully set forth herein.

118. Wells Fargo was enriched by its own and WaMu reimbursement of improperly advanced monies

119. Wells Fargo was enriched at Plaintiff's expense.

120. Equity and good conscience militate against permitting Wells Fargo to retain what Plaintiff is seeking to recover.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Galena Street Fund, L.P. requests judgment against Defendant Wells Fargo as follows:

- A. For damages according to proof;
- B. For punitive damages to the extent allowable;
- C. For restitution, make whole, or other remedy placing Plaintiff in the position it

would have been in but for the misconduct alleged herein.

D. For its attorneys' fees, costs, and expenses in this action as allowed under the Servicing Agreement and applicable law;

E. For prejudgment interest; and

F. For such further relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all matters so triable.

Date: March 7, 2012

s/Daniel M. Reilly

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