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

HSH NORDBANK AG; HSH NORDBANK AG, LUXEMBOURG BRANCH; POSEIDON FUNDING LTD.; HSH NORDBANK SECURITIES S.A., and CARRERA CAPITAL FINANCE LIMITED,

Plaintiffs,

-against-

BARCLAYS BANK PLC; BARCLAYS CAPITAL INC.; SUTTON FUNDING LLC and SECURITIZED ASSET BACKED RECEIVABLES LLC,

Defendants.

Index No. 652678/2011

CONSOLIDATED COMPLAINT

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Plaintiffs HSH Nordbank AG; HSH Nordbank AG, Luxembourg Branch, HSH Nordbank Securities S.A. (collectively, "HSH"), Poseidon Funding Ltd. ("Poseidon"), and Carrera Capital Finance Limited ("Carrera") (collectively, with the exception of Poseidon, "Plaintiffs"), by and through their attorneys, Labaton Sucharow LLP, for their Complaint against Barclays Bank PLC ("Barclays Bank"), Barclays Capital Inc. ("Barclays Capital" or the "Underwriter Defendant"), Sutton Funding LLC ("Sutton Funding") and Securitized Asset Backed Receivables LLC ("SABR") (collectively, "Defendants") allege, upon personal knowledge as to their own actions and documents, and upon information and belief as to all other matters, based on Congressional records and testimony, governmental and regulatory investigations, news reports, scholarly articles, and investigation of counsel and its agents, as follows:

SUMMARY OF THE ACTION

1. This action arises out of Defendants' conduct in connection with the offer and sale to Plaintiffs of certain residential mortgage-backed securities ("RMBS"). Plaintiffs purchased approximately $46 million in RMBS certificates (the "Certificates") in connection with three securitizations issued and/or underwritten by Defendants. These three securitizations are commonly known by their abbreviated names, SABR 2005-FR4, SABR 2006-FR1 and SABR 2007-NC2 (collectively, the "Securitizations"). Plaintiffs' holdings in the Securitizations, including purchase dates and amounts invested, are detailed in Table 1, *infra* Section I.

2. Barclays Bank, Sutton Funding and SABR (collectively, the "Issuer Defendants") prepared, distributed and/or publicly filed prospectuses (the "Prospectuses"), prospectus supplements (the "Prospectus Supplements"), registration statements, term sheets and free writing prospectuses (collectively, the "Offering Documents"), pursuant to which the Certificates were marketed to Plaintiffs. These Offering Documents falsely represented that all the

underlying mortgages and promissory notes would be assigned to the respective trusts (the "Trusts") prior to the issuance of the Certificates, when in fact they were not.

3. Through investigation of a large sample of publicly recorded mortgage documents, Plaintiffs have discovered that more than 99% of the mortgages in each of the three Securitizations were improperly or never assigned. In particular, many of these mortgages remain in the name of the loan's originator or its nominee, and have never been assigned to the Trusts. While others were purportedly assigned to the Trusts, this was long after the securities were issued, contrary to the representations in the Offering Documents. Similarly, the promissory notes were not properly assigned in approximately 81.9% of the sampled loans.

4. The failure to timely assign mortgages to a RMBS trust hinders the trust's ability to foreclose on the collateral – *i.e.*, the mortgaged property – in the event of a borrower default.

5. Also, failure to timely assign these mortgages jeopardizes the crucial Real Estate Mortgage Investment Conduit ("REMIC") tax status of a RMBS trust under the federal tax code, exposing the trust, and ultimately investors, to millions of dollars in tax penalties.

6. The Issuer Defendants knew or were reckless in not knowing that these assignments of the mortgages to the Trusts had not been properly made. The Issuer Defendants misrepresented and omitted material facts concerning the lack of valid assignments of mortgages, thus defrauding Plaintiffs into making these investments.

7. Moreover, the existence of a mistaken belief by Plaintiffs and the Underwriter Defendant that these assignments were properly made represents a mutual mistake of a highly material fact. Therefore, Plaintiffs are entitled to rescission of the sales of the Certificates from the Underwriter Defendant.

8. Additionally, the Issuer Defendants knowingly misrepresented the credit quality and characteristics of the pools of loans that comprised the Securitizations. Extensive investigation and analysis by Plaintiffs into a large sample of the individual loans that supposedly comprised each of the Securitizations has revealed that the Offering Documents significantly misrepresented the combined loan-to-value ("CLTV") ratios, as well as the rates of owner-occupancy. These are crucial metrics that Plaintiffs relied upon in making their decision to purchase the Certificates.

9. By reviewing a large sample of loans in the Securitizations and comparing the representations made about them in the Offering Documents to publicly available data concerning those same loans, Plaintiffs have discovered that the Offering Documents understated CLTV by more than 10 percent in approximately 37% of the loans, based on the sampled loans. Plaintiffs' investigation has also revealed that the Offering Documents overstated owner-occupancy rates by approximately 14.3% - 19.2%, based on the sampled loans.

10. The Offering Documents also contained representations about the rigorous loan underwriting standards employed in the loan origination process, the characteristics of the mortgage loans underlying the Securitizations, including appraisals of the mortgaged properties, and the creditworthiness of the borrowers of those underlying loans. These statements were material to Plaintiffs' decision to invest in RMBS by purchasing the Certificates.

11. However, these representations in the Offering Documents were materially false. Among other things, a significant percentage of the underlying mortgage loans were not originated in accordance with the stated underwriting standards and had materially poorer credit quality than what was represented in the Offering Documents.

12. The Offering Documents falsely represented that the underlying mortgage loans and properties complied with certain underwriting guidelines and standards of the originators, or had compensating factors.

13. In fact, there was a widespread and systematic departure from the originators' underwriting guidelines, and the Issuer Defendants were fully aware of that fact at the time they made the false representations in the Offering Documents relied upon by Plaintiffs and other investors.

14. Prior to their issuance of the Certificates, the Issuer Defendants were specifically informed that large numbers of loans in the Securitizations did not conform to the underwriting guidelines of the originators, including with respect to CLTV ratios and owner-occupancy rates, in reports from their due diligence vendor, Clayton Services Inc. ("Clayton"), and had no compensating factors. Despite having been expressly advised that many of the loans failed to comply with underwriting guidelines, the Issuer Defendants nevertheless included large percentages of these non-compliant loans in the Securitizations, and falsely represented their quality and characteristics to Plaintiffs and other investors.

15. The Issuer Defendants conducted their due diligence using loan files and other information gathered when they purchased the loans from the originators, none of which was accessible to Plaintiffs prior to their purchase of the Certificates. The misrepresentations in the Offering Documents with respect to CLTV and loan-to-value ("LTV") ratios, owner-occupancy rates, assignment of notes and mortgages, adherence to underwriting guidelines, and rating accuracy, could not have been discovered through reasonable diligence by Plaintiffs at the time of the purchases given their lack of access to information and the limited availability of time. Rather, the matters misrepresented in the Offering Documents were peculiarly within the

knowledge of the Defendants, the entities that purchased, reviewed, and securitized the underlying loans and sold the resulting Certificates.

16. The Issuer Defendants are directly responsible for the misstatements and omissions of material fact contained in the Offering Documents because they prepared, distributed and/or publicly filed these documents in order to market and sell the Certificates to Plaintiffs and other investors.

17. Defendant Barclays Bank is likewise responsible for the misstatements and omissions of material fact contained in the Offering Documents because, in addition to its role as sponsor of SABR 2006-FR1, it directly participated in, and possessed dominion and control over, the business operations of Defendants Barclays Capital and SABR.

18. Plaintiffs have suffered tens of millions of dollars in losses on their RMBS holdings, as the value of their Certificates was significantly less than the purchase price due to Defendants' misrepresentations. Plaintiffs therefore seek rescission and/or compensatory damages from Defendants for both mutual mistake and fraud.

19. The Issuer Defendants' wanton and reckless misconduct that was part of a pattern of similar conduct in other securitizations they issued, and were aimed at other investors and the public generally. Plaintiffs are therefore entitled to punitive damages.

PARTIES

Plaintiffs

20. Plaintiff HSH Nordbank AG is a commercial bank incorporated in Germany, with an office at 230 Park Avenue, New York, New York 10169.

21. Plaintiff HSH Nordbank AG, Luxembourg Branch (the "Luxembourg Branch") is a division of HSH Nordbank AG, with a main office at 2 Rue Jean Monnet, 2180 Luxembourg.

22. Plaintiff HSH Nordbank Securities S.A. is a wholly owned subsidiary of HSH Nordbank AG, with its principal place of business at 2 Rue Jean Monnet, 2180 Luxembourg.

23. Plaintiff Poseidon is a funding conduit organized in the Bailiwick of Jersey, with registered offices at Ogier House, The Esplanade, St Helier, Jersey JE4 9WG, Channel Islands. Poseidon funded the purchase of Certificates by non-parties Rasmus Purchase No. 1 Limited and Rasmus Purchase No. 2 Limited (collectively, "Rasmus"). Rasmus has registered offices at Ogier House, The Esplanade, St Helier, Jersey JE4 9WG, Channel Islands.

24. Plaintiff Carrera is a Special Investment Vehicle organized in the Bailiwick of Jersey, with registered offices at Ogier House, The Esplanade, St Helier, Jersey JE4 9WG, Channel Islands.

Defendants

25. Defendant Barclays Bank is a public limited company registered in England and Wales, with its registered head office at 1 Churchill Place, London E14 5HP. Barclays Bank maintains a New York Branch at 200 Park Avenue, New York, New York 10166. Together with its subsidiaries, Defendant Barclays Bank is an international financial services group engaged primarily in banking, investment banking, and asset management.

26. Defendant Barclays Capital is a registered broker-dealer, and is a Connecticut corporation that is principally located at 200 Park Avenue, New York, New York 10166 and is a wholly-owned subsidiary of Barclays Bank. Defendant Barclays Capital was the sole or lead underwriter for each Securitization.

27. Defendant SABR is a Delaware corporation, and is principally located at 200 Park Avenue, New York, New York 10166 and is a wholly owned subsidiary of Barclays Bank. SABR was the depositor for each of the three Securitizations and was therefore also responsible

for preparing and filing the Offering Documents and other filings required under the Securities Exchange Act of 1934.

28. Defendant Sutton Funding is a Delaware limited liability company, with its principal office located at c/o Global Securitization Services, LLC, 445 Broad Hollow Road, Suite 239, Melville, New York 11747. Sutton's sole equity member is GSS Holdings (Sutton), Inc., a Delaware corporation.

JURISDICTION AND VENUE

29. This Court has jurisdiction over each of the Defendants because each of them transacts business within the State of New York within the meaning of Civil Practice Law and Rule ("CPLR") 302(a)(1), and because each of them committed a tortious act inside the State of New York or outside the State of New York causing injury within the State of New York within the meaning of CPLR Rules 302(a)(2) and 302(a)(3). The amount in controversy exceeds $150,000.

30. Venue is proper in this Court pursuant to CPLR Rule 503(a) and Plaintiffs have designated New York County as the place of trial.

FACTUAL ALLEGATIONS

I. THE SECURITIZATIONS

A. The Securitizations At Issue

31. HSH and Carrera purchased Certificates from the New York branch of Barclays Capital, as did Rasmus. HSH, Carrera and Rasmus each suffered losses as a result of Defendants' misrepresentations in connection with their purchases of the Certificates. Rasmus has transferred all of its rights and interests in the Certificates to HSH. HSH and Carrera continue to hold the Certificates.

32. HSH is the subrogee of both Carrera and of Rasmus as to their rights and claims relating to their purchases of certain of the Certificates. At all relevant times, a majority of the credit risk associated with the Certificates was borne by HSH, because Rasmus's and Carrera's ability to repay their debts was dependant on the value of, and/or cashflow expectancy from, the assets each held, which included the Certificates. HSH's rights of subrogation flow from its acquisition of Certificates from Rasmus and Carrera at or near par value subsequent to the losses. This acquisition was necessary in order to protect HSH's economic interests, which were at risk due to HSH's contractual obligation in their role as Liquidity Provider, Capital Noteholder and/or Letter of Credit Provider to cover certain debts, and/or absorb certain losses, of Rasmus and Carrera.

33. HSH is also the assignee of Rasmus's claims relating to the purchase of Certificates.

Table 1

Deal Name	Tranche	Issue Date	Amount Invested
SABR 2005-FR4	M-1	9/29/2005	$6,000,000
SABR 2005-FR4	M-2	9/29/2005	$8,000,000
SABR 2006-FR1	M-1	2/23/2006	$15,000,000
SABR 2006-FR1	M-2	2/23/2006	$5,000,000
SABR 2007-NC2	M-1	2/27/2007	$3,000,000
SABR 2007-NC2	M-2	2/27/2007	$9,000,000

B. The Securitization Process

34. RMBS securitization is the process by which investment banks pool typically thousands of residential mortgages together in a trust, which then issues securities in the form of

certificates to investors. The certificates entitle the holders to a portion of the monthly revenue stream produced by principal and interest payments made by the mortgage borrowers.

35. The process begins when a lending institution makes a home loan to a borrower. The lender, also known as the "originator," then sells such loans, typically in bulk, to an affiliate of the investment bank initiating the securitization, called the "sponsor." The sponsor in turn sells the loans to the "depositor," typically also an affiliate of the same investment bank. Both the sponsor and the depositor are considered an "issuer" of the securities.

36. When the issuer purchases mortgages from an originator, the issuer gains access to all of the "loan files," which contain the underlying documentation that the borrower submitted in connection with its loan application, together with additional information, such as appraisals and credit assessments. Plaintiffs and other investors did not have access to the loan files.

37. The issuer conducts a due diligence review of the loan files associated with the pool of mortgages it is purchasing to ensure that the loans were made in accordance with the stated underwriting guidelines of the originator. Typically, this is done through a third-party vendor, as was done here by Clayton. The review of the loan files includes verification of, among other things, the reported appraisal value of the home, the primary residence of the borrower, the borrower's debt-to-income ratio, the loan documentation level and many other data points.

38. The purpose of this due diligence review is to ensure adherence to the stated underwriting guidelines of the originator. After its review, the due diligence vendor provides an issuer with a report summarizing the pool of loans that it reviewed and advises the issuer which loans complied with underwriting guidelines and which have failed. According to the

representations in the offering documents, if a loan is found not to comply with underwriting guidelines -- *e.g.*, where the reported appraisal value is overstated -- then the loan cannot be included in the trust unless the loan is specifically found to have certain compensating factors.

39. Based on the results of the due diligence review, the issuer prepares offering documents, including the prospectus supplement, which describe for investors such as Plaintiffs the characteristics of the loans in the pool. As discussed in greater detail below, the issuer makes representations in the offering documents to investors concerning, among other things, the CLTV and LTV ratios of the mortgages, the owner-occupancy status, the fact that mortgages are assigned to the trust, and adherence to underwriting guidelines.

40. According to the offering documents, once the due diligence review is complete, and prior to the issuance of the certificates, the depositor must "deposit" all of the loans into the trust by assigning each of the mortgages to the trust in accordance with all applicable state and local laws.

41. The trust then issues certificates of varying seniority, called "tranches," which entitle the certificate-holder to receive a portion of the principal and interest payments that the borrowers make on their mortgages. In the event that a borrower defaults on his or her loan obligation, the trust is entitled to foreclose on the property, and distribute the sale proceeds to certificate-holders according to the priority specified in the offering documents.

42. The certificates are initially allocated to one or more underwriters, who then sell the certificates to investors. The contract for sale of the certificates is reflected in what is commonly known as a "trade ticket" or "confirmation."

II. DEFENDANTS' PARTICIPATION IN THE SECURITIZATIONS

43. Each of the Defendants participated in the securitization process for the Certificates at issue here. As discussed above, an essential part of this process is the origination

or acquisition of mortgages that are timely transferred to a trust, which is created to hold the pool of mortgage loans that back the RMBS and to issue the certificates backed by those loans.

A. Defendant Barclays Bank's Role in the Securitizations

44. Defendant Barclays Bank played several roles in the Securitizations.

45. First, it was the sponsor of SABR 2006-FR1. In that capacity, Barclays Bank purchased the loans from the originator, Fremont Investment & Loan ("Fremont"), and then sold them to the depositor, Defendant SABR, to be deposited into the trust. Together with SABR, Barclays Bank is an issuer of the SABR 2006-FR1 Certificates, and was responsible for the statements in the Offering Documents and the due diligence of the loans it purchased from Fremont.

46. Second, Defendant Barclays Bank is the parent corporation of Defendant Barclays Capital and SABR. In this capacity, Barclays Bank had the ability to, and did in fact, exercise dominion and control over those entities. Barclays Bank directed its investment-banking division, Barclays Capital, in its role as underwriter on the Securitizations. Barclays Bank also established SABR for the sole purpose of facilitating Barclays Bank's securitization business. SABR has no significant assets of its own, and exists solely to acquire and pool residential mortgages, as well as perform other related responsibilities, for asset-backed securities offerings.

47. There was also overlapping management among Defendants. For example, John Carroll was not only a Director for Barclays Bank, but also head of global securitized asset trading for Barclays Capital, as well as Vice President and Chief Financial Officer for SABR.

48. Accordingly, Defendant Barclays Bank is responsible for the actions of Barclays Capital and SABR as they relate to the Securitizations.

B. Defendant Barclays Capital's Role in the Securitizations

49. Defendant Barclays Capital was either the sole or lead underwriter on all of the Securitizations at issue herein. In that capacity, Barclays Capital was responsible for underwriting the sale of the Certificates and managing its offering to investors, including Plaintiffs. Barclays Capital was also the counterparty to the contract for sale of each of the Certificates to Plaintiffs.

C. Defendant SABR's Role in the Securitizations

50. Defendant SABR was the depositor on all three of the Securitizations at issue herein. As depositor, SABR was responsible for purchasing the underlying mortgage loans, and for transferring, selling or otherwise conveying the mortgage loans to the trusts that issued the Certificates and held the loans pooled into the Securitizations.

51. SABR was also responsible for forming the issuing trusts that held the mortgage loans for the benefit of the Certificate-holders, and for preparing and filing the Offering Documents, pursuant to which the Certificates were offered, with the U.S. Securities and Exchange Commission ("SEC").

D. Defendant Sutton Funding's Role in the Securitizations

52. Sutton Funding was the sponsor of SABR 2007-NC2. Sutton Funding purchased the loans from the originator, New Century Mortgage Corp. ("New Century"), and then sold them to the depositor, SABR, to be deposited into the Trust. Together with SABR, Sutton Funding is an issuer of the SABR 2007-NC2 Certificates, and was responsible for the statements in the Offering Documents and the due diligence of the loans it purchased from New Century. According to the Prospectus Supplement for SABR 2007-NC2, "[p]ursuant to an administration agreement between Sutton and Barclays Bank PLC ("Barclays"), Sutton engages Barclays, as administrator, to manage Sutton's mortgage loan acquisition business." (S-42)

III. THE ISSUER DEFENDANTS MADE FRAUDULENT, FALSE AND MISLEADING STATEMENTS AND OMISSIONS REGARDING ASSIGNMENT OF THE MORTGAGES AND NOTES

53. Through investigation of publicly recorded mortgage documents, Plaintiffs have discovered that, contrary to the Issuer Defendants' statements in the Offering Documents, virtually all of the mortgages and promissory notes that were represented to have been assigned to the Trusts were not in fact assigned to the Trusts at the time the Certificates were issued. Plaintiffs have conducted two separate investigations, with a combined sample size of more than 2,000 mortgages from the Securitizations, and have found that ***not one*** of the sampled mortgages, which were all represented to have been assigned into the Trusts prior to issuance of the Certificates, was in fact timely assigned to the Trust.

54. Plaintiffs reasonably relied on the Issuer Defendants' representations, and therefore believed at the time they purchased the Certificates that the Trusts that issued the Certificates held the mortgages on the underlying loans. The results of Plaintiffs' investigation have shown this was not the case.

55. This belief was an essential part of the contracts to sell the Certificates. Plaintiffs would not have purchased so-called "mortgage-backed" securities that were not actually backed by the mortgages represented to be in the pool, for at least two reasons: (1) when these securities are not backed by actual mortgages or notes, the Trust is left without any recourse against a borrower that ceases to make payments; and (2) valid and timely assignments of the notes and mortgages are essential to the Trusts' tax status as REMICs, and therefore are necessary to avoid highly punitive tax consequences.

A. Statements Regarding Assignments of Mortgages and Notes to the Trusts

56. The Issuer Defendants represented in the Prospectus Supplement for SABR 2005-FR4 (at page 45) that "[a]t the time of issuance of each series of securities, the depositor

will cause the assets comprising the related trust fund or mortgage securities included in the related trust fund to be assigned to the trustee." The Prospectus Supplements for SABR 2006-FR1 and SABR 2007-NC2 made the same representations, verbatim (at pages 45 and 51, respectively).

57. The Prospectus Supplement for SABR 2005-FR4 also stated (at page 111) that "[f]or certain series of REMIC Securities, tiered REMICs may be effected by two or more separate elections being made to treat designated portions of the related trust fund as REMICs for federal income tax purposes." The Prospectus Supplements for SABR 2006-FR1 and SABR 2007-NC2 made the same representations, verbatim (at pages 111 and 117, respectively).

58. Moreover, the Prospectus Supplement for SABR 2005-FR4 represented (at page 108) that an opinion of legal counsel would be supplied stating that "assuming compliance with all provisions of the related pooling and servicing agreement, . . . the related trust fund, or each applicable portion of the related trust fund, will qualify as a REMIC." The Prospectus Supplements for SABR 2006-FR1 and SABR 2007-NC2 made the same representations, verbatim (at pages 108 and 114, respectively).

59. Finally, with respect to the notes, the Prospectus Supplement for SABR 2005-FR4 represented (at page S-127) that "the depositor will cause to be delivered to the trustee, on or before the closing date, the following documents with respect to each mortgage loan which constitute the mortgage file: (a) the original mortgage note, endorsed without recourse in blank by the last endorsee, including all intervening endorsements showing a complete chain of endorsement from the originator to the last endorsee . . . ." The Prospectus Supplements for SABR 2006-FR1 and SABR 2007-NC2 made the same representations, verbatim (at pages S-58 and S-62, respectively).

B. Failure to Assign Mortgages and Notes Into The Trusts

60. Plaintiffs have investigated and analyzed loan-level information for each of the Securitizations to determine the accuracy of certain representations made in the Prospectus Supplement, including the assignment of mortgages and notes to the Trusts.

61. In two separate investigations, Plaintiffs have conducted a review of publicly available mortgage documents at county clerk's offices across the country for the mortgages and/or notes that were represented to have been deposited into the Trusts.

62. Both investigations have independently revealed that over 99% of the mortgages and notes were not properly and/or timely assigned to the RMBS Trusts.

63. As evidenced by the attached Exhibit 1, Plaintiffs have analyzed a sample of mortgage documents, including 339 mortgages from SABR 2005-FR4 (*see* Exhibit 1A, SABR 2005-FR4 0001 – SABR 2005-FR4 1204), 377 mortgages from SABR 2006-FR1 (*see* Exhibit 1B, SABR 2006-FR1 0001 – SABR 2006-FR1 2262), and 271 mortgages from SABR 2007-NC2 (*see* Exhibit 1C, SABR 2007-NC2 0001 – SABR 2007-NC2 1850).

64. This investigation revealed that of the 987 total mortgages sampled, ***none*** were assigned to the Trusts at the time of the issuance, as was represented in the Offering Documents, and ***only seven*** were assigned to the Trusts within three months thereafter, as is required by REMIC tax laws. Thus, ***over 99%*** of the sampled mortgages were either improperly assigned to the Trusts more than three months after issuance or were never assigned at all – in direct contradiction to the representations in the Offering Documents provided by Defendants and relied upon by Plaintiffs.

65. Specifically, approximately 38% to 61% of the mortgages sampled have never been assigned to the Trusts. Moreover, based on the sampled loans, approximately 38% to 61% of the mortgages were assigned to the Trusts more than three months after the Securitization

closed. The overwhelmingly large percentages of mortgages for each of the Securitizations that were never assigned to the Trusts, and those that were not assigned at or three months after issuance, are set forth below in Table 2.

Table 2

Deal Name	Sample Size	Percentage of sampled mortgages assigned to the Trusts at issuance	Percentage of sampled mortgages assigned to the Trusts within 3 months	Percentage of sampled mortgages assigned to the Trusts later than 3 months	Percentage of sampled loans never assigned to the Trusts
SABR 2005-FR4	339	0%	2.1%	37.5%	60.4%
SABR 2006-FR1	377	0%	0%	39%	61%
SABR 2007-NC2	271	0%	0%	61.6%	38.4%

66. There are several kinds of mortgage-related documents provided for in the attached Exhibit 1, which demonstrate: (a) whether the particular mortgage was ever assigned to the Trusts, and (b) if it was assigned, the date on which the assignment was made. The nomenclature of these documents may vary depending on the jurisdiction where the document was recorded, as indicated below.

67. As the above Table 2 shows, a substantial number – and in the case of SABR 2005-FR4 and SABR 2006-FR1, a majority – of the sampled mortgages underlying the Securitizations have never been assigned to the Trusts. There are primarily two kinds of documents that show that the mortgage has not been assigned and is generally still held by the lender or its nominee. First, Exhibit 1 contains *Satisfaction of Mortgage* ("Satisfactions") documents, also sometimes referred to as a *Release of Mortgage*. These documents demonstrate that, at a point in time more than three months after the Certificates were issued, the respective mortgages referred to therein were fully paid off and discharged. Significantly, the borrower's

obligations are discharged *by the original lender* or its nominee, and not the Trust, providing strong evidence that the mortgage was never assigned to the Trust. Second, Exhibit 1 contains recordings of the actual mortgages, sometimes referred to as a *Deed* or *Deed of Trust*. For each such document in Exhibit 1, Plaintiffs found no subsequent document evidencing any assignment at the county clerk's office where the Deed was filed.

68. For documents that *were* assigned to the Trusts at some point, albeit after the three month period mandated for REMIC tax treatment, Plaintiffs have analyzed the assignments of the sampled mortgages themselves. A comparison of the date of the assignments and the date of the issuance of the Certificates clearly establish that *none* of those mortgages were assigned to the respective Trust at issuance, as was represented in the Prospectus Supplements. Moreover, for two of the Securitizations, none of the mortgages were assigned to the Trust within three months of issuance, as is required under the REMIC tax laws. For SABR 2005-FR4, only 2.1% of the mortgages were assigned to the Trust within three months of issuance. Further, as set forth in Table 2 above, between approximately 38% and 61% of the sampled underlying mortgages for each of the three Securitizations were assigned to the Trusts more than three months after issuance of the Certificates, contrary to the express representations in the Offering Documents and in direct violation of the REMIC tax laws. Moreover, as a result of the Issuer Defendants' recklessness, eight of the sampled mortgages that the Issuer Defendants represented as having been assigned to one of the Trusts at issue here, were in fact erroneously assigned to an entirely different trust.

69. The assignment documents also show that a majority of the promissory notes evidencing these loans were not properly assigned to the Trusts. As shown in Table 3 below, 81.9% of the assignments expressly stated that they were transferring the note together with the

mortgage. This means that the note had not previously been assigned to the Trusts, contrary to what was represented to Plaintiffs in the Offering Documents.

Table 3

Deal Name	Sample Size	Percentage of sampled notes assigned to the Trusts within 3 months	Percentage of sampled notes assigned to the Trusts later than 3 months
SABR 2005-FR4	134	5.2%	89.5%
SABR 2006-FR1	141	0.0%	74.5%
SABR 2007-NC2	167	0.0%	77.8%

70. Additionally, in a separate investigation Plaintiffs analyzed a different sample of 600 mortgages from SABR 2005-FR4, 600 mortgages from SABR 2006-FR1, and 400 mortgages from SABR 2007-NC2. This investigation independently confirmed that the vast majority of the mortgages in the pools underlying the Securitizations were **never** assigned to the Trusts. Moreover, this second investigation also showed that of the mortgages that were eventually assigned to the Trusts, none were assigned prior to the issuance of the Certificates, as was represented in the Offering Documents, or within three months thereof, as is required by the REMIC tax laws. The results of this additional investigation and analysis are shown in Table 4 below.

Table 4

Deal Name	Sample Size	Percentage of sampled mortgages assigned to the Trusts at issuance	Percentage of sampled mortgages assigned to the Trust within 3 months	Percentage of sampled mortgages assigned to the Trusts later than 3 months	Percentage of sampled mortgages never assigned to the Trusts
SABR 2005-FR4	600	0%	0%	20.83%	79.17%
SABR 2006-FR1	600	0%	0%	19.16%	80.84%
SABR 2007-NC2	400	0%	0%	26.25%	73.75%

71. The Issuer Defendants were responsible for depositing the mortgages into the Trusts, pursuant to the terms of the Offering Documents.

72. But, in fact, in years prior to the issuance of the Certificates, the ongoing practice of the Issuer Defendants was to not transfer mortgages into the RMBS trusts that they securitized.

73. The Issuer Defendants therefore knew or were reckless in not knowing that the vast majority of the mortgages here had not, in fact, been assigned to the Trusts prior to the issuance of the Certificates.

C. Material Undisclosed Risks to Investors Resulting from the Failure to Assign the Mortgages and Notes to the Trusts

74. The assignment of the mortgages and notes into the Trust is perhaps the single most essential part of the mortgage-backed securitization process. Without these assignments, the securities are not truly "mortgage-backed" at all.

1. Foreclosure and Contractual Remedy Consequences

75. As a result of the Issuer Defendants' failure to assign all of the mortgages and notes to the Trusts, when borrowers default on their obligations, as they have done in record numbers since the Certificates were issued, the Trusts cannot legally foreclose on the mortgage.

76. Moreover, apart from foreclosure, the only other remedy available to the Trust to collect on the obligation where a borrower ceases to make payments is to bring an action in contract under the promissory note. However, the Issuer Defendants' failure to transfer the notes into the Trusts prevents the Trusts from pursuing this remedy, meaning that where the mortgage and note have not been assigned, the Trusts have no legal recourse if a borrower ceases to make payments to the Trust and must incur a significant loss.

2. Tax Consequences

77. The second significant consequence of the failure to timely assign qualified mortgages to the trust affects the tax status of the trust.

78. RMBS trusts may avoid taxation at the entity level if they qualify as a REMIC under the Internal Revenue Code and the Treasury regulations promulgated thereunder. If an RMBS trust qualifies as a REMIC, it becomes a pass-through entity not subject to taxation on interest it collects, or gains in the value of the collateral it holds. *See* Internal Revenue Code § 860A(a).

79. If a trust does not qualify as a REMIC, however, then the trust is simply considered a corporation and is taxed at the applicable corporate tax rate. *See* Internal Revenue Code §§ 11(a), 7701(i)(1), 7704(a). Certificate holders in RMBS trusts that do not qualify as REMICs are, therefore, subject to "double taxation." Investors pay tax on the payments they receive from the trusts pursuant to their Certificates regardless of whether the trust is a REMIC or not. However, if the trust is not a REMIC, then the trust must pay additional taxes on interest collected and gains in collateral value, which payments are made from funds that would otherwise have been distributed to investors. The Certificate holders are then taxed *again* on the income distributions they receive from the trust.

80. To qualify as a REMIC, a trust must own assets consisting principally of "qualified mortgages" or "other investments." *See* Internal Revenue Code § 860D(a)(4). If more than a *de minimis* amount of a trust's assets are something other than qualified mortgages or other investments, the trust will not qualify as a REMIC and will be taxed as a corporation.

81. In order to qualify as a REMIC, a trust must be a passive investment vehicle rather than an active real estate lending business. Its assets must consist of a fixed pool of mortgages that were assigned to the trust no later than three months after the "startup day" (*i.e.*, day interests in the trust are issued). *See* Internal Revenue Code § 860D(a)(4). The REMIC may not receive new contributed mortgages into its pool after the startup day and may not receive any new mortgages into its pool after the three-month deadline. If any new mortgages are transferred to the trust after three months, the REMIC will lose its favorable tax status, with several adverse consequences to investors: (1) the trust's income will be subject to corporate double taxation; (2) the income from the late transferred mortgages will be subject to a 100% tax; and (3) if late transferred mortgages are received through contribution, the value of the mortgages will be subject to a 100% tax. *See* Internal Revenue Code §§ 860D, 860F(a), 860G(d). Moreover, by conducting an active business in acquiring new mortgages rather than merely passively investing in the initial fixed pool, the RMBS trust risks losing REMIC status in its entirety.

82. If a trust that previously elected REMIC status is later found never to have qualified as a REMIC, or is found to have ceased qualifying as a REMIC, then the trust is subject to retroactive taxation at the prevailing corporate tax rate, and potential additional penalties for underpayment of tax and/or fraudulently purporting to be a REMIC, *see* Internal Revenue Code §§ 6501(c), (e); 6662(a); 6663(a), which taxes and penalties are ultimately borne by the investors.

83. In sum, the Issuer Defendants knowingly or recklessly made false representations in the Offering Documents that all mortgages would be assigned to the Trusts prior to the issuance of the Certificates and that the Trusts would qualify for favorable REMIC tax status. The Issuer Defendants knew this to be false because they had in fact been securitizing RMBS for years without effecting assignments to the respective Trusts. The Issuer Defendants knew that the Trusts therefore could not qualify for favorable REMIC tax status.

IV. PLAINTIFFS AND THE UNDERWRITER DEFENDANT OPERATED UNDER A MUTUAL MISTAKE WITH RESPECT TO THE ASSIGNMENT OF THE MORTGAGES AND NOTES INTO THE TRUSTS

84. Moreover, the Underwriter Defendant who sold Plaintiffs the Certificates was, like Plaintiffs, acting with the understanding – albeit incorrect – that all of the mortgages had been assigned to the Trust at the time the Certificates were issued.

85. These mutually mistaken facts – that all of the mortgages had been assigned to the Trusts prior to issuance of the Certificates and that the Trusts qualified for REMIC classification – were highly material to all the parties, and existed at the time the Certificates were purchased. The assignments were critical to Plaintiffs, because without valid, timely assignments of the mortgages and notes, Plaintiffs stood to lose millions of dollars through unrecoverable defaults and tax consequences.

86. Indeed, without such assignment of the mortgages into the Trusts, these so-called "mortgage-backed securities" were not actually backed by mortgages. Plaintiffs would not have purchased these Certificates had they known they were not backed by collateral or the notes.

87. Because of the existence of material mutual mistakes, the contracts under which Plaintiffs purchased the Certificates are void *ab initio*, and Plaintiffs are therefore entitled to rescission of their purchases of the Certificates.

V. THE ISSUER DEFENDANTS' FRAUDULENT, FALSE AND MISLEADING STATEMENTS AND OMISSIONS REGARDING LOAN QUALITY

A. False and Misleading Statements Regarding Occupancy Status

1. Statements Regarding Occupancy Status of Borrower

88. The Prospectus Supplements for the Securitizations contain a wide variety of information regarding the credit quality of the pooled mortgage loans. One particularly important piece of data is the occupancy status of the borrower.

89. Occupancy status refers to the residency of the borrower – whether the borrower is living in the property secured by the mortgage in question, or whether the property is a second home, or vacation or investment property. A loan to a borrower who lives in the mortgaged property is referred to as an "owner-occupied" loan. This information is material to an investor's assessment of the credit risk, because a property's occupancy status affects the credit risk of the loan.

90. A borrower who actually lives in the home secured by the mortgage is much less likely to default on a loan obligation than a borrower with a mortgage on an investment property or second home. In fact, a study conducted by Equifax Inc. concluded that non-owner-occupied loans were nearly ***twice*** as likely to be in default twelve months after origination as owner-occupied loans. *See* Equifax Capital Markets Media Primer, at p. 1 (Mar. 25, 2010), available at www.equifax.com/PR/pdfs/012910CMDataPrimer.pdf.

91. Overall, the higher the percentage of loans pooled as collateral for the Securitization that are not owner-occupied, the greater the risk of loss to investors. Even a relatively small decline in the percentage of owner-occupied properties is meaningful to investors, as those small differences significantly impact the overall risk of the Securitizations.

92. For each of the Securitizations, the Offering Documents materially *overstated* the percentage of loans that were owner-occupied, and thus materially *understated* the Certificates' degree of risk.

93. The representations concerning owner-occupancy rates made in the Offering Documents for the Securitizations were as follows:

SABR 2005-FR4: 93.1% owner-occupied (Prospectus at S-61);

SABR 2006-FR1: 93.5% owner-occupied (Prospectus at 1 of Schedule A); and

SABR 2007-NC2: 89.8% owner-occupied (Prospectus at 1 of Schedule A).

2. Owner-Occupancy Data Was Materially False

94. Plaintiffs conducted a review of loan-level data for a sample of the pooled mortgages in these Securitizations to determine whether the above-referenced statements about owner-occupancy were accurate. They were not.

95. This large sampling of 1600 loans from the Securitizations provides a basis to infer that the data provided in the Offering Documents concerning owner-occupancy was materially false. The number of owner-occupied properties collateralizing the Securitizations was, in fact, significantly lower than represented.

96. The occupancy status of the sampled loans was verified using the borrower's contemporary credit history. Plaintiffs assessed whether creditors were reporting the securitized property's address as the customer's mailing address six months after the origination of the mortgage.

97. Six months provides ample time for a borrower to notify creditors of their new address. If the securitized property did not show up *anywhere* in the borrower's credit history in the six months after the securitized mortgage was originated, this is a strong indication that the property was not in fact the borrower's primary residence.

98. It is clear from the loans sampled for each Securitization that far fewer properties were owner-occupied than reported. It is also clear that the data reported in the Offering Documents was easily verifiable by the Issuer Defendants' due diligence process. For each of the Securitizations, a material number of sampled loans did not reflect the securitized property anywhere in the borrower's credit history during the six months after the loan was originated, as shown in Table 5.

Table 5

Trust	Sample Size	Reported Owner-Occupied Percentage	Percentage of Reported Owner-Occupied Loans Sampled That Were Not on Borrower's Credit History After 6 Months	Percentage by which Owner-Occupancy was Overstated in the Offering Documents based on the Sample
SABR 2005-FR4	600	93.1% (Prospectus at S-61)	15.4%	**14.3%**
SABR 2006-FR1	600	93.5% (Prospectus at 1 of Schedule A)	17.1%	**15.9%**
SABR 2007-NC2	400	89.8% (Prospectus at 1 of Schedule A)	21.4%	**19.2%**

99. Thus, for the SABR 2005-FR4 pool, because 15.4% of the 93.1% of the SABR 2005-FR4 pool that was represented as owner-occupied in the Offering Documents was not in fact owner-occupied, the owner-occupancy rates published in the Offering Documents were overstated by approximately ***14.3%*** (15.4% x 93.1% = 14.3%). Similarly, for SABR 2006-FR1, the Offering Documents overstated the owner-occupancy rates by approximately ***15.9%***. In SABR 2007-NC2, the Offering Documents overstated the owner-occupancy rates by approximately ***19.2%***.

B. False and Misleading Statements Regarding Combined Loan-to-Value Ratios

1. Statements Regarding Combined Loan-to-Value Ratios

100. Another material piece of information provided in the Prospectus Supplements for the Securitizations indicative of the quality of the pooled mortgage loans was the CLTV ratio. A CLTV ratio is, generally, the ratio of the combined principal balance of all liens on the mortgaged property to the value of the mortgaged property. The CLTV ratio in the Offering Documents is provided on a weighted average basis, meaning that the CLTV ratio of each loan in the pool is weighted according to the size of the loan in relation to the aggregate principal balance of the entire loan pool.

101. CLTV ratios are material to prospective RMBS investors because they are among the strongest predictors of default risk on the loan underpinning the securitizations. A lower ratio means that the borrower has more of his or her own equity in the property, which decreases the likelihood that he or she will simply stop paying the mortgage if the property declines in value. For example, a borrower that has a mortgage with a CLTV ratio of 80% has 20% of his or her own equity invested in the house and is much less likely to default and risk foreclosure than a borrower that has a mortgage with a CLTV ratio of 100% that has no equity in the property.

102. A lower CLTV also means that the trust has more collateral to protect against borrower default, lowering the "loss severity" in the event that a default does occur. Loss severity is a measure of losses suffered by the trust, and ultimately investors, in the event of a default. For instance, if a loan has a CLTV of 100%, the entire cost of the foreclosure process, as well as any loss taken on the sale of an asset that has decreased in value, is borne by the trust. By contrast, a loan with a CLTV of 80% provides a 20% cushion to account for such losses. Where such costs are borne by the trust, this reduces the amount of funds that would otherwise be available to make regular payments to investors in the securitization.

103. Accurate appraisals are crucial to the accuracy of CLTV ratios, as the value of the property (*i.e.,* the denominator of the CLTV ratio) is the lower of either the purchase price or the appraised value of the property. If an appraisal is inflated, it will change the CLTV ratio such that the credit risk of the loan is understated.

104. As with owner-occupancy data, even small inaccuracies in CLTV ratios are material to investors, such as Plaintiffs, because they can have a significant impact on the risk of investing in the Certificates.

105. There are at least two ways in which the CLTV ratio data was misrepresented in the Offering Documents for each of the Securitizations. *First*, the Offering Documents materially understated the percentage of loans with a CLTV ratio over 100%. A CLTV of over 100% means that the combined liens on the property was greater than the value of the property itself at the time the loan is originated. The Offering Documents for each Trust stated that no mortgage in the loan pool contained a CLTV ratio above 100%. (*See* SABR 2005-FR4 Prospectus Supplement at S-61, SABR 2006-FR1 Prospectus Supplement at 1 of Schedule A, and SABR 2007-NC2 Prospectus Supplement at 1 of Schedule A). *Second*, the Offering Documents understated the weighted average CLTV ratio for the entire pool in each of the Securitizations. Each of these misrepresentations materially understated the degree of credit risk associated with the underlying loan pool. The CLTV ratios represented in the Offering Documents for these Securitizations are set forth in Table 6 below.

2. Combined Loan-to-Value Ratio Data Was Materially False

106. Plaintiffs directed a review of loan-level data for the pooled mortgages in the SABR Securitizations to determine whether the above-referenced statements about CLTV ratios were correct. They were not.

107. An automated valuation model ("AVM") was applied to a large sampling of 1600 loans for the Securitizations, comprised of 600 loans for SABR 2005-FR4, 600 loans for SABR 2006-FR1, and 400 loans for SABR 2007-NC2, in order to determine the value of the underlying properties at the time the pooled loans were originated. The resulting data revealed that the CLTV ratios reported in the Offering Documents materially misrepresented the true CLTV ratios and materially understated the risks of the Securitizations.

108. AVMs use data from county assessor records, tax rolls, and information about comparable property sales in order to determine property values. They are a routinely-used and widely-accepted method of determining property value. Plaintiffs used an industry-standard AVM that is regularly used to determine property values by 18 of the top 20 mortgage lenders in the United States, as well as by brokers, government agencies, marketing firms, consumers and insurance companies.

109. Analyzing the sampled loans using the AVM model revealed the following actual CLTV ratios for the loans collateralizing the Securitizations, contrasted with the reported values discussed earlier:

Table 6

Trust	Reported CLTV over 100%	Actual CLTV over 100% based on the AVM	Reported Weighted Avg. CLTV	Actual Weighted Avg. CLTV based on the AVM	Percentage by which Weighted Avg. CLTV was Overstated in the Offering Documents based on the Sample
SABR 2005-FR4	0% (Prospectus at S-54)	28.1%	82.5 % (Prospectus at S-54)	89.6%	**7.1%**
SABR 2006-FR1	0% (Prospectus at 2-3 of Schedule A)	33.6%	81.7 % (Prospectus at 1 of Schedule A)	101.3%	**19.6%**
SABR 2007-	0%	25.1%	81.7 %	92.1%	**10.4%**

Trust	Reported CLTV over 100%	Actual CLTV over 100% based on the AVM	Reported Weighted Avg. CLTV	Actual Weighted Avg. CLTV based on the AVM	Percentage by which Weighted Avg. CLTV was Overstated in the Offering Documents based on the Sample
NC2	(Prospectus at 5 of Schedule A)		(Prospectus at 1 of Schedule A)		

110. Apparent from this data is the fact that the appraised values reported in the Offering Documents for the pooled properties were significantly higher than the actual property values. These overstatements led to a material understatement of the CLTV ratios, and a corresponding understatement of the investment risk.

111. Significantly, each of the SABR Securitizations represented that the pooled mortgages for their Trusts did not include *a single* mortgage with a CLTV ratio over 100% – meaning that the amount of the combined loan was higher than the value of the property. (*See* SABR 2005-FR4 Prospectus Supplement at S-54, SABR 2006-FR1 Prospectus Supplement at 1 of Schedule A, and SABR 2007-NC2 Prospectus Supplement at 1 of Schedule A). In actuality, based on a sample of 1600 loans, approximately 25.1% – 33.6% of the loans were associated with properties valued less than the borrower's debt. This is a tremendously risky characteristic for investors that depended on borrowers' continued payments toward those loans.

112. Moreover, the CLTV data disclosed in the Offering Documents was also materially misleading because the Issuer Defendants knowingly excluded additional liens that existed at the time the Prospectus Supplements were issued. Thus, the "combined" loan-to-value ratio represented in the Prospectus Supplements did not accurately reflect the full amount of these borrowers' debt on the property. This alone caused the representations in the Offering Documents to understate CLTV ratios by as much as 7% in the Securitizations, *in addition to* the substantial understatement of CLTV ratios caused by inflated appraisal prices.

113. Finally, the Prospectus Supplement for SABR 2006-FR1 also misrepresented the LTV ratios for the loans in the pool. LTV reports the ratio of only the loan that is being securitized to the value of the property, but excludes additional liens on the property as part of the calculation. This is also an important metric that was relied on by Plaintiffs because the LTV ratio measures how likely the Trust is to recover the full value of the securitized loan in the event of a foreclosure on the mortgaged property.

114. The weighted average LTV for SABR 2006-FR1 was represented in the Prospectus Supplement to be 77.32%. *See* Prospectus at 2-3 of Schedule A. In fact, based on Plaintiffs' analysis of 600 sampled loans from this Trust, the actual weighted average LTV ratio at the time these representations were made was approximately 88.5%. This understatement of the LTV ratio associated with the loan pool underlying the Trust materially misrepresented the true credit risk of the investments that Plaintiffs made in the SABR 2006-FR1 Certificates because the amount likely to be recovered by the Trust in the event of borrower defaults was actually much lower than indicated by the LTV ratio numbers disclosed in the Prospectus Supplement.

C. The Issuer Defendants Knew that the Representations in the Prospectus Were False Based on their Due Diligence

115. During the period from 2006 through 2007, the Issuer Defendants used Clayton to perform due diligence on the pools of mortgages that went into its RMBS Securitizations. As part of the due diligence, the Issuer Defendants used Clayton to review a sample of loans for each of the Securitizations.

116. Clayton reviewed the loan files for more than 6000 loans for the Issuer Defendants during this time. The purpose of Clayton's review was to determine whether the

loans complied with the underwriting guidelines of the originator. This review scrutinized many aspects of the originators' guidelines, including CLTV ratio and owner occupancy rates.

117. Clayton scored each loan it reviewed on a scale of 1 to 3. A score of "1" meant that the loan complied with the underwriting guidelines of the originator. A score of "2" meant that the loan did not comply with the originator's underwriting guidelines, but had unspecified "compensating factors." A score of "3" meant that the loan failed to comply with the originator's underwriting guidelines and did not possess any compensating factors.

118. Approximately 27.3% of the loan files Clayton reviewed for the Issuer Defendants received a score of 3. Clayton provided detailed reports to the Issuer Defendants containing the scores of the reviewed loans prior to and during the preparation of the Offering Documents.

119. The Issuer Defendants therefore knew when they were preparing the Offering Documents for the RMBS Securitizations that, on average, approximately 27.3% of the loans failed to comply with the underwriting guidelines of the originator and were without any compensating factors.

120. Nevertheless, the Issuer Defendants "waived in" 28% of the loans Clayton had rejected and ultimately included them in the RMBS sold to investors, including Plaintiffs.

121. Moreover, even though the reports from Clayton gave notice to the Issuer Defendants that on average 27.3% of the sampled loans did not comply with underwriting guidelines or possess compensating factors, the Issuer Defendants failed to conduct any additional review of the loans not yet sampled. In other words, even though they knew that the un-sampled set would contain approximately the same proportion of bad loans (as such is the

purpose of sampling), the Issuer Defendants ignored this obvious defect, and instead, placed *all* of the un-sampled loans into the Securitizations as well.

122. Then, after having knowingly waived in loans that violated underwriting guidelines and had no compensating factors, the Issuer Defendants nevertheless told investors, including Plaintiffs, that the ***exact opposite*** was true. In other words, the Issuer Defendants represented in the Offering Documents that ***all*** the loans in the mortgage pool either complied with the underwriting guidelines or had compensating factors, even though they knew this was plainly false. (*See infra* Section VI).

123. Moreover, since the Issuer Defendants received detailed information regarding LTV ratios, CLTV ratios and owner-occupancy rates from Clayton, the Issuer Defendants knew or should have known that the representations concerning these important metrics were false.

VI. THE ISSUER DEFENDANTS' FRAUDULENT, FALSE AND MISLEADING REPRESENTATIONS THAT THE LOANS IN THE POOL COMPLIED WITH THE UNDERWRITING GUIDELINES OF THE ORIGINATORS

124. Underwriting guidelines are supposed to be the backbone of any mortgage-backed security. They define lending practices that are meant to assess a borrower's ability to repay the mortgage obligation. They are the link between the lender's first-hand interaction with the borrower and the investor that ultimately assumes the risk of the borrower's default. Countless investigations and reports have now established that the failure to adhere to underwriting guidelines was one of the primary causes of the financial crisis.

125. All of the loans in the three Securitizations came from two originators: Fremont and New Century. SABR 2005-FR4 and SABR 2006-FR1 were both entirely comprised of loans originated by Fremont and SABR 2007-NC2 was populated solely with loans originated by New Century.

126. The Prospectus for each Securitization stated that the loans conformed to the underwriting guidelines of the originator, unless they possessed additional specifically identified compensating factors.

127. In particular, the Prospectuses for SABR 2005-FR4 and SABR 2006-FR1 stated that the "[m]ortgage loans are underwritten in accordance with Fremont's current underwriting programs." *See* pages S-42 and S-44, respectively. The Prospectus Supplement for SABR 2007-NC2 similarly represented that "[t]he mortgage loans originated or acquired by New Century Mortgage Corporation were done so in accordance with the underwriting guidelines established by it." *See* Prospectus Supplement at S-45.

128. Although exceptions to the underwriting guidelines were permissible, they would only apply where it was determined "that, ***based upon compensating factors***, a prospective mortgagor not strictly qualifying under the underwriting risk category guidelines described below is nonetheless qualified to receive a loan, *i.e.*, an underwriting exception." *See* SABR 2005-FR4 Prospectus Supplement at S-42 (emphasis added). The Prospectus Supplements for both SABR 2006-FR1 and SABR 2007-NC2 similarly contained representations that all loans in the pool would either conform to the underwriting guidelines of the originator or possess compensating factors. *See* pages S-44 and S-46, respectively.

129. In other words, if no compensating factors were present, according to the Offering Documents, the loan had to comply with the underwriting guidelines, or it *could not* be included in the Securitization.

130. The Issuer Defendants knew that the originators systematically disregarded their underwriting guidelines, but nevertheless the Issuer Defendants represented to investors, such as Plaintiffs, that those guidelines had been adhered to.

131. The U.S. Senate Permanent Subcommittee on Investigations issued a 646-page report entitled "Wall Street and the Financial Crisis" (the "Levin Report") which found that Fremont and New Century, in particular, were both "well known within the industry for issuing poor quality loans."

132. The disclosures in the Offering Documents concerning adherence to underwriting standards or compensating factors were false because, as the Issuer Defendants knew from their due diligence (*see supra* Section V.C), both Fremont and New Century routinely disregarded their own underwriting guidelines.

(a) New Century

133. New Century ranks number one on the Office of the Comptroller of the Currency's (the "OCC") "Worst Ten in the Worst Ten" list of the nation's most egregious originators. This means that more foreclosures were instituted on mortgages originated by New Century in 2005 through 2007 in the ten cities with the highest foreclosure rates than any other originator in the country. This is the result of New Century's dramatic departure from its own underwriting guidelines, which were supposed to prevent loans from being made to borrowers who clearly did not have the ability to repay them.

134. After New Century filed for bankruptcy in 2008, the Bankruptcy Court Examiner found that:

> New Century had a brazen obsession with increasing loan originations, without due regard to the risks associated with that business strategy. . . . Although a primary goal of any mortgage banking company is to make more loans, New Century did so in an aggressive manner that elevated the risks to dangerous and ultimately fatal levels." Final Report of Michael J. Missal, Bankruptcy Examiner, *In re New Century TRS Holdings, Inc.*, No. 07-10416 (KJC) at 3 (Bankr. Del. Feb. 29, 2008) ("N.C. Bankruptcy Report").

135. The Bankruptcy Court Examiner went on to say that "New Century ... layered the risks of loan products upon the risks of loose underwriting standards in its loan originations to high risk borrowers." *Id.*

136. Furthermore, the Bankruptcy Court Examiner concluded that there were "serious loan quality issues at [New Century] beginning as early as 2004" as well as a systematic failure to correct these issues until it was "too late to prevent the consequences of longstanding loan quality problems in an adversely changing market." *Id.* at 110.

137. A former Vice President of Corparate Risk at New Century, Patricia Lindsay, has testified that New Century systematically approved loans with 100% financing to borrowers with extremely low credit scores and no proof of income. *See* Testimony of Patricia Lindsay to the FCIC, Apr. 7, 2010, at 3.

138. Ms. Lindsay further testified that appraisers faced extreme pressure from their superiors, and deliberately distorted data "…that would help support the needed value rather than using the best comparables…."

139. Finally, at least one court has already found that New Century's own statements about its supposed "improved underwriting controls and appraisal review process" were false or misleading statements of material fact. *See In re New Century,* No. CV 07-00931 DDP (JTLx), ECF No. 333 at 33-34 (C.D. Cal. Dec. 3, 2008).

(b) Fremont

140. In March of 2007, the Federal Deposit Insurance Corporation ("FDIC") issued a cease and desist order to Fremont, due to "'unsafe and unsound banking practices and violations of law,' including operating with 'a large volume of poor quality loans'; 'unsatisfactory lending practices'; 'excessive risk'; and 'inadequate capital.'" Levin Report at 238 (quoting Fremont Cease and Desist Order at 1-3). The FDIC also found that Fremont lacked adequate mortgage

underwriting criteria, and was “approving loans with loan-to-value ratios approaching or exceeding 100 percent of the value of the collateral.” Fremont Cease and Desist Order at 2-4.

141. A subsequent flood of investigative findings and news reports have revealed to the public that Fremont blatantly disregarded its underwriting standards for years in order to satisfy RMBS issuers’ ever increasing demand for subprime mortgages. Like New Century, Fremont was high on the OCC’s “Ten Worst” list, with the fifth most foreclosures in the ten worst metropolitan areas for loans originated from 2005 to 2007.

142. Indeed, after it filed for Bankruptcy in 2008, Fremont reported receiving default notices on *$3.15 billion* in subprime mortgages it had sold to investors. *In re Fremont General Corporation*, Case No. 8:08-bk-13421-ES (C.D. Cal. July 30, 2010).

143. The Supreme Judicial Court of Massachusetts also affirmed a finding that “Fremont made no effort to determine whether borrowers could 'make the scheduled payments under the terms of the loan,’” and that “Fremont knew or should have known that [its lending practices and loan terms] would operate in concert essentially to guarantee that the borrower would be unable to pay and default would follow.” *Commonwealth v. Fremont Inv. & Loan*, 897 N.E.2d 548, 556 (Mass. 2008).

VII. THE ISSUER DEFENDANTS FAILED TO DISCLOSE THAT THEY OBTAINED THE RATINGS OF THE CERTIFICATES THROUGH FALSE REPRESENTATIONS TO THE RATINGS AGENCIES

144. In order to convince investors to purchase the Certificates, the Issuer Defendants obtained and marketed inflated ratings for the Certificates by misrepresenting the risk profile of the underlying loans to the ratings agencies.

145. All of the Certificates purchased by Plaintiffs received high investment-grade ratings that were touted in the Offering Documents.

146. Those ratings were subsequently downgraded at an alarming rate, as shown in Table 7 below.

Table 7

Certificate	Issue Date	Agency	Rating	Effective Date	Most Recent Rating	Effective Date
SABR 2007-NC2 (M-1)	2/27/2007	Fitch	AA+	02/27/07	D	11/1/2011
		DBRS	AAH	02/02/07	C/*	1/23/2012
		Moody's	Aa1	03/08/07	C	3/20/2009
SABR 2007-NC2 (M-2)	2/27/2007	Fitch	AA+	02/27/07	D	1/28/2011
		DBRS	AA	02/27/07	C/*	1/23/2012
		Moody's	Aa2	03/08/07	WR	1/11/2012
		Standard & Poor's	AA	03/04/07	D	1/19/2011
SABR 2005-FR4 (M-1)	9/29/2005	Fitch	Aasf	09/29/05	A	3/22/2011
		DBRS	AA	09/30/05	AAH/*	1/23/2012
		Moody's	Aa2	09/29/05	Aa2	7/8/2010
		Standard & Poor's	AA	10/04/05	AA-	3/2/2010
SABR 2005-FR4 (M-2)	9/29/2005	Fitch	A	09/29/05	C	4/16/2010
		DBRS	A	09/30/05	C/*	1/23/2012
		Moody's	A2	09/29/05	Caa3	7/8/2010
		Standard & Poor's	A	10/04/05	CCC	3/2/2010
SABR 2006-FR1 (M-1)	2/23/2006	Fitch	AA+	02/23/06	C	3/22/2011
		DBRS	AAH	02/23/06	C/*	1/23/2012
		Moody's	Aa2	02/23/06	C	7/15/2011
		Standard & Poor's	AA	02/28/06	CC	10/21/2011
SABR 2006-FR1 (M-2)	2/23/2006	Fitch	A+	02/23/06	D	1/28/2010
		DBRS	AH	02/23/06	C/*	1/23/2012
		Moody's	A2	02/23/06	C	3/20/2009
		Standard & Poor's	A+	02/28/06	D	12/24/2009

147. These ratings were only achieved because the Issuer Defendants deliberately misled the rating agencies concerning, among other things, the CLTV ratios, owner-occupancy rates and adherence to underwriting guidelines.

148. The Issuer Defendants knew through their due diligence (*see infra* Section IX) that the credit risk data they supplied to the ratings agencies was inaccurate. Had an accurate picture of the mortgage pool been supplied to the ratings agencies, they never would have given the Certificates the high ratings that they did.

149. The Issuer Defendants were therefore well aware that the ratings they represented in their Offering Documents were false and misleading.

VIII. PLAINTIFFS RELIED ON DEFENDANTS' MISREPRESENTATIONS IN THEIR DECISIONS TO PURCHASE THE CERTIFICATES

150. Plaintiffs had rigorous investment criteria that were strictly adhered to when RMBS purchases were considered or approved. Specifically, Plaintiffs' internal investment guidelines required that the loan pools backing an RMBS certificate meet certain characteristics with respect to LTV or CLTV ratios where available, as here, and owner-occupancy rates in order to be eligible investments for Plaintiffs to purchase. Plaintiffs did not purchase any RMBS certificates that were not represented to have met these criteria.

151. In order to meet Plaintiffs' investment criteria, the weighted average CLTV ratio of the entire pool could not exceed 85%. Further, under Plaintiffs' investment criteria no RMBS certificates could be purchased if there were any loans in the pool with a CLTV ratio of 100% or more. There were additional proportional limits for other CLTV thresholds in place to avoid pools that had been loaded with a few loans with very low CLTV ratios to create a distorted average. These limits were on a sliding scale depending on the credit rating of the certificate as shown in Table 8.

Table 8

CLTV Criteria	AAA Certificates	AA / A Certificates
Weighted Average	Must be lower than 85%	Must be lower than 85%
Greater than or equal to 100%	None Allowed	None Allowed
Greater than or equal to 95%	Cannot exceed 15%	Cannot exceed 12%
Greater than or equal to 85%	Cannot exceed 40%	Cannot exceed 35%

152. Based upon the statements made in the Offering Documents, Plaintiffs reasonably believed that each one of the Securitizations complied with Plaintiffs' investment criteria for CLTV ratios.

153. But, in fact, none of the Securitizations met the requirements of Plaintiffs' strict investment guidelines because the actual weighted average CLTV ratios of the loans exceeded what was represented in the Offering Documents. Based on Plaintiffs' sample of 1600 loans from the Securitizations, the actual weighted average CLTV in the Securitizations was between 89.6% and 101.3%

154. Had Plaintiffs known the true weighted average CLTV of the loans in the Securitizations, they would not have purchased the Certificates.

155. Additionally, Plaintiffs' investment guidelines contained targets for occupancy status. The guidelines stated that at least 90% of the mortgages in the pool should be on the borrower's primary residence.

156. Plaintiffs considered these owner-occupancy benchmarks to be very important in evaluating the quality of a loan pool.

157. Based upon the statements made in the Offering Documents Plaintiffs reasonably believed that each one of the Securitizations exceeded or was within 0.2% of Plaintiffs' investment target for owner-occupancy status.

158. But, in fact, *none* of the Securitizations met the requirements of Plaintiffs' strict investment guidelines because the actual owner-occupancy rates of the loans were significantly less than what was represented in the Offering Documents, as shown in Table 5 above.

159. Had Plaintiffs known the true owner-occupancy rates of the properties underlying the loans in the Securitizations, they would not have purchased the Certificates.

160. Plaintiffs also relied on the Issuer Defendants representations concerning the assignment of mortgages to the Trusts. In particular, Plaintiffs considered the Trusts' ability to foreclose on a defaulted mortgage in a timely and efficient manner to be of significant importance, and Plaintiffs conducted their own due diligence with respect to the efficiency and cost of foreclosures by various servicers.

161. Plaintiffs also relied on the Issuer Defendants' representations that the Trusts qualified for REMIC classification and that the Trusts would be pass-through entities, thereby avoiding double-taxation of the distributions paid to Plaintiffs.

162. Had Plaintiffs been aware of the lack of valid assignments of the mortgages to the Trusts, or that Trusts would not qualify for REMIC classification, they would not have purchased the Certificates.

IX. PLAINTIFFS SUFFERED SIGNIFICANT LOSSES DUE TO DEFENDANTS' MISCONDUCT

163. Plaintiffs paid a purchase price for the Certificates that was far in excess of what those securities were actually worth at the time of purchase. Plaintiffs paid the price they did based on the false representations in the Offering Documents that made the credit risk of the Certificates appear much lower than it was in reality. All of Plaintiffs' Certificates received investment grade ratings at issuance as a result of the Issuer Defendants' misrepresentations concerning the credit risk of the underlying loan pools. The vast majority of the Certificates have since been downgraded to junk status. Moreover, borrower defaults have since skyrocketed. "Loss severity," the measure of the value lost to the Trust as a result of a default, has continued to rise as well. In addition, the Trusts fail to qualify for the favorable tax treatment afforded to arrangements that qualify for REMIC classification. All of this is a direct result of the poor quality of the underlying loans, which was hidden from investors through the

misrepresentations in the Offering Documents. Plaintiffs' overpayment for the Certificates has caused damages to Plaintiffs in an amount to be determined at trial.

FIRST CAUSE OF ACTION

Common Law Fraud
(Against Barclays Bank, Sutton Funding and SABR)

164. Plaintiffs repeat and re-allege the allegations above as if fully set forth herein.

165. The Issuer Defendants, sold the Securities pursuant to the Offering Documents, and are responsible for the representations contained therein.

166. The Offering Documents contained numerous misrepresentations, as fully set forth above, including with respect to the assignment of the underlying notes and mortgages, LTV and CLTV ratios, owner-occupancy rates, REMIC classification, adherence to underwriting guidelines regarding the loan pools underlying the Securitizations, and the risk profile reflected in the ratings granted to the Certificates.

167. These misrepresentations were material to Plaintiffs in their decision to invest in the Certificates.

168. The Issuer Defendants were aware that the misrepresentations were false and misleading based on their due diligence investigation of the loans underlying the Securitizations, or were reckless in failing to investigate the misrepresentations.

169. Plaintiffs reviewed Offering Documents for each of the Securitizations, and reasonably relied on the misrepresented data therein in determining to purchase the Certificates. Plaintiffs would not have purchased the Certificates but for those misrepresentations.

170. Plaintiffs have suffered massive losses as a direct result of the misrepresentations of the Issuer Defendants in the Offering Documents, and are therefore entitled to relief.

SECOND CAUSE OF ACTION

Fraudulent Concealment
(Against Barclays Bank, Sutton Funding and SABR)

171. Plaintiffs repeat and re-allege the allegations above as if fully set forth herein.

172. The Issuer Defendants sold the Certificates to Plaintiffs pursuant to the Offering Documents.

173. Prior to the securitization of each of the loan pools into the Trusts, the Issuer Defendants received detailed loan files containing material information concerning the credit quality of the loans. Specifically, the loan files contain the underlying documentation that the borrowers submitted in connection with their loan applications, together with additional information, such as appraisals and credit assessments. Plaintiffs did not have access to the loan files or the information contained therein.

174. Moreover, prior to the securitization of each of the loan pools into the Trusts, the Issuer Defendants conducted due diligence on the loans underlying the Securitizations. This due diligence provided the Issuer Defendants with additional material information regarding the loans and mortgages underlying the sale of the Securities, such as the existence of interim second liens, and adherence to underwriting guidelines. Furthermore, the Issuer Defendants were cognizant of the fact that the information they were providing to the rating agencies in connection with the rating of the Certificates did not accurately depict the credit risk of the underlying loan pools (together with the additional facts set forth in paragraphs 173-174, the "Concealed Material Facts").

175. The Plaintiffs did not have access to the Concealed Materials Facts.

176. The Issuer Defendants' knowledge of the Concealed Material Facts was superior to that of Plaintiffs. The Issuer Defendants were aware that Plaintiffs lacked access to the

Concealed Material Facts. Because of this superior knowledge, the Issuer Defendants had a duty to disclose the Concealed Material Facts to the Plaintiffs.

177. The Issuer Defendants did not disclose the Concealed Material Facts to Plaintiffs, but rather intentionally hid them from Plaintiffs and other investors in order to make the investments appear safer than they actually were.

178. Plaintiffs could not have detected the Concealed Material Facts through the exercise of ordinary due diligence.

179. Had the Concealed Material Facts been disclosed to Plaintiffs, they would not have purchased the Certificates.

180. Plaintiffs have suffered significant losses as a direct result of the Issuer Defendants' fraudulent concealment of the Concealed Materials Facts from Plaintiffs, and are therefore entitled to relief.

THIRD CAUSE OF ACTION

Rescission Based Upon Mutual Mistake
(Against Barclays Capital)

181. Plaintiffs repeat and re-allege the allegations above as if fully set forth herein.

182. Based on the representations in the Offering Documents both the Underwriter Defendant, which sold the Certificates, and Plaintiffs, which purchased them, believed that the mortgages described in the Offering Documents had been validly assigned to the Trusts at the time the Certificates were purchased.

183. As discussed above, the vast majority of the mortgages were, in fact, not assigned to the Trusts at the time the Certificates were purchased by Plaintiffs.

184. Therefore, a mutual mistake existed at the time that Plaintiffs contracted for the sale of the Certificates.

185. The assignment of the mortgages to the Trust was a crucial fact that went to the heart of each of the Securitizations. Without proper assignments, the trustee for the Trusts has no legal right to foreclose on the collateral in the event a borrower defaults, and the Trusts do not qualify for REMIC classification. Further, without proper and timely assignments, the Trusts bear a substantial risk of being subjected to heavy tax assessments and penalties which are ultimately borne by investors such as Plaintiffs.

186. These were significant risks that were undisclosed due to the misrepresentations in the Offering Documents, and were neither part of Plaintiffs' investment objectives, nor Defendants purported investment offer. Had Plaintiffs known that the mortgages and notes had not been properly assigned to the Trusts, they would not have purchased the Certificates.

187. Because a mutual mistake of a material fact existed at the time Plaintiffs contracted for the sale of the Securitizations, the transaction is void and Plaintiffs are therefore entitled to rescission.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs pray for relief as follows:

An award in favor of Plaintiffs against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing and/or mutual mistake, in an amount to be proven at trial, including:

(a) Rescission and/or rescissory damages for recovery of the consideration paid for the Certificates;

(b) Alternatively, Plaintiffs' damages caused by Defendants' fraud, including any diminution in value of the Certificates, as well as lost principal and lost interest payments thereon;

(c) Punitive damages on Plaintiffs' fraud claims;

(d) Prejudgment interest;

(e) Reasonable costs and expenses incurred in this action, including attorneys' fees and costs; and

(f) Any such other relief as the Court may deem just and proper.

Dated: New York, New York
April 2, 2012

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