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

MBIA INSURANCE CORPORATION,

Plaintiff,

- against -

CREDIT SUISSE SECURITIES (USA) LLC, DLJ MORTGAGE CAPITAL, INC., and SELECT PORTFOLIO SERVICING, INC.

Defendants.

Index No. 603751/09

VERIFIED COMPLAINT

Plaintiff MBIA Insurance Corporation ("MBIA"), by and through its attorneys, Patterson Belknap Webb & Tyler LLP, for its complaint against defendants Credit Suisse Securities (USA) LLC ("CS Securities") and its affiliates DLJ Mortgage Capital, Inc. ("DLJ", and together with CS Securities, "Credit Suisse") and Select Portfolio Servicing, Inc. ("SPS"), hereby alleges upon personal knowledge as to itself and as to its own conduct, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. MBIA brings this action to seek redress for Credit Suisse's pervasive and material misrepresentations and breaches of the parties' agreements pertaining to a mortgage-backed securities transaction that DLJ sponsored, CS Securities marketed, SPS serviced, and

MBIA insured, which closed in April 2007 (the Home Equity Mortgage Trust Series 2007-2 Transaction (the "Transaction")).

2. The Transaction consisted of DLJ, as the "sponsor," aggregating thousands of residential mortgage loans into a loan "pool," which subsequently was transferred to a trust formed to issue securities that were to be paid down based on the cash flow from the pooled mortgage loans. SPS was the "servicer" of the Transaction, and in that role was tasked with, among other things, collecting monthly mortgage payments, monitoring performance of borrowers so as to maximize monthly mortgage payment collections, and seeking recovery from delinquent borrowers for amounts due on the mortgage loans in the pool. CS Securities served as underwriter for the public offering, and thus marketed the securities to investors. To enhance the marketability of certain classes of the securities, CS Securities solicited, and DLJ and SPS contracted with MBIA to issue, a financial guaranty insurance policy guaranteeing payment on these securities. MBIA's financial guaranty insurance provided that MBIA would guarantee payments of interest and ultimate principal to purchasers of the securities in the event that the pool of loans in the trust did not generate sufficient income to cover such payments.

3. CS Securities, SPS and DLJ, as affiliates under common control, acted in concert (a) to induce MBIA to enter into an insurance agreement and issue an insurance policy by making fraudulent statements and untrue contractual representations and warranties and, thereafter, (b) to thwart the agreements' remedial protocol.

4. CS Securities fraudulently induced MBIA to participate in the Transaction by falsely representing (i) the attributes of the securitized loans, (ii) that Credit Suisse used certain strict underwriting guidelines to select the loans sold into the Transaction, when in fact it did not, and (iii) that Credit Suisse conducted extensive due diligence on the securitized loans to

ensure compliance with the strict guidelines, when in fact such diligence had not been undertaken.

5. Similarly, DLJ induced MBIA to participate in the Transaction by making numerous untrue representations and warranties in the parties' insurance agreement and other operative transaction documents. DLJ made express representations and warranties regarding the characteristics of the securitized loan pool in the aggregate and DLJ's mortgage loan conduit business (the "transaction-level warranties"), and relating to the attributes of each of the individual loans securitized in the Transaction (the "loan-level warranties"). The transaction-level and loan-level warranties both were critical to MBIA's assessment of the risk of insuring the Transaction.

6. The transaction-level warranties included, among other things, representations and warranties concerning the accuracy and adequacy of DLJ's disclosures about its (i) mortgage-loan pools, (ii) mortgage-lending operations, including the acquisition and securitization of its loans, (iii) financial statements, and (iv) compliance with laws governing the offer and sale of the securities. These broad representations formed an important part of the foundation of the parties' bargain because the accuracy, or conversely the breach, of the representations necessarily would have a material effect not only on the risk profile of the loans included in the Transaction, but also on (i) DLJ's entire loan portfolio acquired for securitization, (ii) its financial condition, (iii) its ability to carry out its contractual obligations, and (iv) its general suitability as a party to the contemplated securitization.

7. The loan-level warranties concerned the attributes of each of the individual loans in the securitized pool. DLJ represented and warranted, among other things, that (i) the critical attributes of each loan as supplied by DLJ to MBIA were true, correct and

complete, (ii) each loan complied with the applicable originators' underwriting standards, prudent and customary underwriting guidelines, and prudent and customary origination, underwriting, servicing and collection practices, and (iii) no borrower was in breach of his or her obligations under the loan agreements. If a loan failed to comply with the loan-level warranties, DLJ agreed to cure the breach, or repurchase or provide an adequate substitute for the non-conforming loan.

8. In making both the transaction-level and loan-level warranties, DLJ provided the assurance that systemic underwriting failures and origination abuses did not plague the loans it securitized, and assumed the risk in the event its representations were inaccurate. MBIA, in turn, assumed the market risk that loans *that were originated pursuant to the represented practices and controls and bearing the represented attributes* might not perform as expected. This fundamental allocation of risk was the heart of the parties' bargain.

9. Since the Transaction closed in April 2007, the securitized loans have defaulted at a remarkable rate. Through October 31, 2009, loans representing more than 51% of the original loan balance, or approximately $464 million, have defaulted and been charged-off, requiring MBIA to make over $296 million in claim payments.

10. Once the losses began to mount, MBIA sought access to the loan origination files maintained by SPS to ascertain the cause of the poor performance. For months, SPS stonewalled MBIA's repeated attempts to obtain from SPS copies of the documentation relating to the individual loan files, despite the fact that SPS was contractually required to provide such access. SPS's obfuscation was intended to prevent MBIA from uncovering that (i) the mortgage loans that were pooled for purposes of the Transaction did not comply with the promises that CS Securities and DLJ had made about them; (ii) SPS had not adequately serviced

the securitized loans; and (iii) SPS improperly had released without consideration a large number of "charged-off" loans from the trust to its affiliate CS Securities. Indeed, MBIA did not obtain access to any of the loan origination files until it terminated SPS as servicer.

11. Once in possession of the loan files, MBIA retained a third-party consultant to review loan origination files of 1,798 loans in the securitized loan pool (with an aggregate initial principal balance of over $109 million), of which 477 were selected at random from the entire securitized pool. The results of that review were startling. Incredibly, approximately 85% of all the loans reviewed breached DLJ's representations and warranties. The review demonstrates a complete abandonment of applicable guidelines and prudent practices such that the loans were (i) made to numerous borrowers who were not eligible for the reduced documentation loan programs through which their loans were made, and (ii) originated in a manner that systematically ignored the borrowers' inability to repay the loans. The rampant and obvious nature of the breaches confirms that Credit Suisse made intentional misrepresentations concerning its mortgage loans and the due diligence that Credit Suisse purported to perform regarding the quality of those loans.

12. Based on the review, to date, MBIA has provided DLJ with formal notice that loans with an aggregate initial principal balance of approximately $78.1 million breached DLJ's representations and warranties. In further breach of its contractual obligations, DLJ has not repurchased any of the identified loans.

13. For significant consideration, DLJ sold to the trust a pool replete with loans that did not comply with Credit Suisse's representations and warranties, and that were made to borrowers with little to no ability to repay their debt. CS Securities similarly profited from selling securities backed by these defective loans to investors whose payments were

guaranteed by the policy it obtained from MBIA. SPS reaped substantial servicing fees from its role as servicer, despite the fact that it refused to comply with the fundamental, contractually required obligations in that role—to service the loans in accordance with accepted and prudent industry practices. But when the non-conforming loans began to default, DLJ refused to comply with and instead frustrated its contractual repurchase obligations. As a direct result of Credit Suisse's wrongdoing, MBIA already has made claim payments on its policy in the amount of $296 million through October 31, 2009 and expects to pay many millions of dollars more in the future. MBIA brings this action to recover for this harm.

THE PARTIES

14. MBIA is a New York corporation with its principal place of business at 113 King Street, Armonk, New York 10504.

15. DLJ is organized under the laws of the State of Delaware and maintains its principal place of business in New York, New York. DLJ is, or was at all relevant times herein, a wholly owned subsidiary of Credit Suisse Group.

16. CS Securities is organized under the laws of the State of Delaware and maintains its principal place of business in New York, New York. CS Securities is, or was at all relevant times herein, a wholly owned subsidiary of Credit Suisse Group.

17. SPS is organized under the laws of the State of Utah, and maintains its principal place of business in Salt Lake City, Utah. SPS is, or was at all relevant times herein, a wholly owned subsidiary of Credit Suisse Group.

JURISDICTION AND VENUE

18. This Court has personal jurisdiction over DLJ, CS Securities and SPS pursuant to N.Y. C.P.L.R. §§ 301 and 311. Further, in the Insurance Agreement, dated as of

April 30, 2007 (the "Insurance Agreement"), DLJ and SPS irrevocably submitted to the jurisdiction of any court in the State of New York located in the City and County of New York.[1]

19. Venue is proper in New York County pursuant to N.Y. C.P.L.R. §§ 503(a) and 503(c) because each of DLJ and CS Securities has its principal office within New York County and therefore is deemed to reside therein. Further, in the Insurance Agreement, DLJ and SPS agreed to waive any defense of improper venue.[2]

FACTUAL ALLEGATIONS

A. CS Securities Fraudulently Induces MBIA's Participation in the Transaction

20. On or about March 2, 2007, Tim Kuo of CS Securities contacted MBIA to solicit a bid for MBIA to issue a policy insuring certain senior classes of securities issued as part of the Transaction. At the time, Mr. Kuo was a CS Securities Vice President, and the point person for Credit Suisse on the Transaction.

21. CS Securities' affiliate, DLJ, had amassed for securitization a pool comprised of over fifteen thousand closed-end, second lien loans with an aggregate outstanding principal balance of approximately $900 million. The contemplated Transaction involved the sale of the loans to a trust formed to issue securities backed and to be paid down by the cash flow from the loans. CS Securities solicited MBIA to issue a financial guaranty insurance policy guaranteeing payment on certain senior classes of these securities. CS Securities wanted MBIA's insurance policy to make the Transaction more attractive to potential investors.

22. In his initial March 2, 2007 communication, Mr. Kuo indicated that the Transaction was to close later that month[3] and that MBIA would need to decide quickly whether

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[1] Insurance Agreement, § 6.05(a).

[2] Insurance Agreement, § 6.05(a).

[3] In fact, the Transaction did not close until the end of the following month.

it wanted to participate. MBIA initially had reservations with respect to its participation in the Transaction. Its concern was driven primarily by two issues.

23. First, MBIA had never previously insured a mortgage-backed securities transaction for Credit Suisse, and more particularly, involving Credit Suisse's "Home Equity Mortgage Trust" or "HEMT" platform. MBIA's decision whether to bid, and the premium to demand for its insurance policy, depended on its assessment of the likelihood that the loans would generate sufficient cash flow to fund the amounts due to the security holders. Unlike traditional first-lien mortgage loans used to finance the purchase of a home, the loans in the proposed transaction were second-lien mortgage loans. Because the loans were not secured by a priority lien on the underlying property, the likelihood that the holder of the loans would recover the amounts due was highly dependent on the borrowers' ability to repay the loans in full (and less so on an expectation of recovery from foreclosure in the event of default). Given the large number of loans involved, and the limited amount of time to complete the transaction, it was impossible for MBIA to review the loan files in the pool to determine whether each borrower could repay.

24. Second, MBIA had concerns regarding one of the originators of the loans securitized in the Transaction. CS Securities' affiliate DLJ, which pooled the various loans for the Trust, had not itself originated the loans. Instead, it had acquired the loans through multiple channels from various "originators" that had dealt directly with the borrowers. MBIA had a negative view of one of the primary originators of the loans, a company called New Century. Indeed, MBIA had previously declined to insure at least one other mortgage-backed securities transaction specifically because it included loans originated by New Century. Given MBIA's limited ability to review information about the individual loans, combined with its concerns

about the practices of one of the primary originators, MBIA required strong assurances from Credit Suisse regarding its business and the loans proposed for the securitization as a condition to MBIA's participation in the Transaction.

25. CS Securities responded to both of MBIA's concerns by providing direct and explicit representations designed to induce MBIA's participation. With respect to MBIA's first concern about its lack of prior insurance of a Credit Suisse securitization, CS Securities assured MBIA that Credit Suisse was a pillar of the financial industry and that its mortgage-backed securities business—and the "shelf" from which the loans proposed for securitization were drawn—had a track record of success. With respect to MBIA's concern about certain of the loans in the pool being originated by New Century, CS Securities assured MBIA that Credit Suisse itself was backing those loans.

26. Specifically, to address the novelty of Credit Suisse's solicitation of financial guaranty insurance for a securitization involving its HEMT shelf, CS Securities pointed to its strong institutional pedigree. Credit Suisse Group was at the time the second largest commercial bank headquartered in Switzerland and was viewed as a pioneer in the development of the residential mortgage-backed securities market, with more than twenty years of experience in the sector. Given Credit Suisse Group's stature, MBIA was assured that it could trust the representations being made about the Transaction.

27. CS Securities also touted to MBIA the impressive performance of its prior securitizations, noting in a March 22, 2007 email that "the performance of our HEMT shelf [is] far superior to all other securitization shelves." Moreover, CS Securities made a presentation to MBIA about the specific financial performance of Credit Suisse's prior HEMT deals, which were purportedly structured similarly to the Transaction. In that presentation, CS Securities

represented the high quality and performance of the HEMT shelf and the steps it had taken to ensure improved performance in the future. CS Securities affirmative representations render all the more glaring its knowing omission of the more pertinent and crucial fact: As CS Securities knew full well, the loans in those prior HEMT securitizations were originated through the same defective underwriting practices as those included in the Transaction, and the performance data disclosed was therefore materially and intentionally misleading. But these assurances had their intended effect, as MBIA relied upon Credit Suisse's successful history in the field in deciding to participate in the Transaction. An internal MBIA memorandum dated April 13, 2007 explained that the Transaction was appealing in significant part because of "the longstanding track record and demonstrated collateral consistency of the HEMT shelf."

28. In addition, CS Securities made representations to MBIA about the quality of the individual loans that would serve as collateral for the Transaction. CS Securities provided MBIA a loan schedule, or "tape," which set forth material information about each loan, including attributes about the borrower and his or her credit-worthiness, such as the borrower's debt-to-income ("DTI") ratio, as well as attributes about the property serving as collateral for the loan, such as the combined loan-to-value ratio ("CLTV"). Moreover, CS Securities assured MBIA that the loans involved in the transaction were underwritten to strict guidelines created or approved by Credit Suisse.

29. CS Securities also assured MBIA that it had conducted due diligence on the loans included in the Transaction to ensure compliance with the Credit Suisse-created or approved underwriting guidelines, and the borrowers' ability to repay the pooled loans. Along those lines, CS Securities touted the fact that it had rejected a large number of loans from the pool as proof that Credit Suisse was scrupulous in ferreting out loans that did not meet its

exacting standards before they were added to the HEMT shelf. In addition, Mr. Kuo sent MBIA on April 13, 2007 spreadsheets illustrating the purportedly rigorous due diligence that CS Securities (through Mr. Kuo) represented had been performed on the loans. These spreadsheets depict an individualized review of thousands of the loans included in the pool. CS Securities' representations concerning the underwriting and due diligence purportedly conducted to confirm the disclosures concerning the pooled loans were critical to MBIA's decision to participate in the Transaction. Indeed, MBIA's reliance is confirmed in its April 16, 2007 internal memorandum prepared to obtain approval for the Transaction, which specifically reiterates CS Securities' representation that "Credit Suisse performs due diligence prior to loan purchase, [and] thus *only buys the loans approved.*"

30. CS Securities also made representations to address MBIA's concerns about the fact that many of the loans had been originated by New Century. In addition to providing the assurances outlined above regarding strict due diligence performed by Credit Suisse on the loans – including those originated by New Century—CS Securities assured MBIA that Credit Suisse itself would vouch for the New Century loans by providing express contractual representations and warranties about their quality. That all of the representations and warranties for the deal were to come from Credit Suisse—and MBIA did not bear the risk that New Century or any of the other originators had provided false information—was a crucially important inducement to MBIA's participation in the transaction. MBIA's reliance is confirmed in an April 13, 2007 internal memorandum regarding the proposed Transaction, where MBIA noted that "[Credit Suisse] is providing all of the reps in the deal (i.e., no exposure to buyback obligations of New Century or other originators)."

31. CS Securities made the foregoing representations in advance of MBIA's execution of, and as an inducement for MBIA to issue, a financial guaranty insurance policy. Credit Suisse intended MBIA to rely on this information in evaluating the risk of issuing its policy, and MBIA reasonably did so in deciding to issue its policy. CS Securities' motive for providing these representations is clear: CS Securities and its affiliates stood to profit handsomely from the Transaction and the sale of the mortgage-backed securities to investors.

32. As has recently come to light, CS Securities' representations were materially false and misleading. As discussed further below, MBIA retained an expert third-party consultant that reviewed the files created during the origination of the loans and determined, after great time and expense, that the disclosures on the loan tape concerning the key attributes of each loan were false and misleading. The review also confirmed that the due diligence CS Securities conveyed to MBIA was not designed or conducted to assess the loans' compliance with underwriting guidelines, including whether the borrowers' stated income was reasonable or adequate to repay the loan. The extent of the non-conforming loans identified by the review—which was the vast majority—demonstrates that CS Securities either knew that its representations were false, or acted recklessly in making them. What is clear in view of the level of due diligence purportedly undertaken is that the representations were not made honestly.

33. MBIA would not have agreed to participate in the Transaction had it known that CS Securities' representations were false and/or omitted critical information that was required to make them not misleading. The misrepresentations ran to the core of the contemplated Transaction, directly contravening the assurances MBIA required as a condition to participating in the Transaction and materially increasing the risk of MBIA's insurance policy. As CS Securities knew full well, these representations were material to MBIA's assessment of its

risk and decision to issue its policy. Had CS Securities made truthful disclosures, MBIA would have determined that the risk associated with the Transaction was too great for it to accept.

B. DLJ Makes Representations and Warranties to Induce MBIA to Issue its Policy

34. After CS Securities solicited MBIA's participation in the Transaction, its affiliate DLJ stepped in to provide the contractual representations and warranties that MBIA required as a condition to issuing its insurance policy. Evidencing the concerted conduct of the Credit Suisse affiliates, Mr. Kuo *of CS Securities* also acted on behalf of, and was the authorized signatory for, *DLJ* with respect to two agreements that contained the representations and warranties: (1) the Insurance Agreement between DLJ, SPS and MBIA (the "Insurance Agreement"), dated as of April 30, 2007; and (2) the Pooling and Servicing Agreement ("PSA"), among DLJ, SPS, their affiliate Credit Suisse First Boston Mortgage Securities Corp. ("CSFBMSC"), and U.S. Bank National Association, as Trustee (the "Trustee") dated as of April 1, 2007. The two contracts were among the series of agreements DLJ caused to be executed to effectuate the Transaction.

35. First, DLJ as Seller sold and assigned its entire interest in the loan pool it had amassed to CSFBMSC pursuant to an Assignment and Assumption Agreement, dated April 30, 2007. The securitized pool was comprised of 15,615 closed-end second-lien mortgage loans with an aggregate principal balance of almost $900 million. DLJ had itself acquired these loans from various originators that made the loans to the borrowers and then bundled them for resale.

36. CSFBMSC, in turn, sold its interest in the mortgage loans to the Home Equity Mortgage Trust 2007-2 (the "Trust") pursuant to the PSA. The Trust then issued mortgage-backed securities in the form of certificates (the "Certificates") certain classes of which were registered with the U.S. Securities and Exchange Commission ("SEC") and marketed to investors by CS Securities by means of an April 20, 2007 Prospectus ("Prospectus")

and a April 27, 2007 Prospectus Supplement ("ProSupp"). The Prospectus and ProSupp contain additional representations about the characteristics of the loans in the Trust.

37. Finally, pursuant to the PSA, SPS was engaged to act as servicer with respect to the loans. In that role, SPS was responsible for various administrative duties, such as collecting mortgage payments (including loss mitigation by increased collection efforts on delinquent loans), initiating foreclosure proceedings and reporting key information about the loans to the Trustee for dissemination to the other transaction participants and the Certificateholders. SPS represented in Section 3.01 of the PSA that it would service the loans in accordance with "those mortgage servicing practices of prudent mortgage lending institutions which service mortgage loans of the same type as such Mortgage Loans in the jurisdiction where the related Mortgaged Property is located." Significantly, as explained in more detail below, SPS also was responsible for maintaining documentation files regarding the loans, and was obligated to make such documentation available to MBIA (among others) upon reasonable request.

38. With the underlying securitization agreements executed, DLJ, SPS and MBIA then entered into the Insurance Agreement, which as discussed below, contains express representations and warranties and incorporates by reference representations and warranties in the PSA.

39. Relying on CS Securities' representations made in connection with its solicitation of MBIA's participation in the Transaction and DLJ's and SPS's representations, warranties, covenants and indemnities contained in and encompassed by the Insurance Agreement and the PSA, MBIA issued Certificate Guaranty Insurance Policy Number 495190 (the "Policy"). Under the Policy, MBIA agreed to insure certain payments of interest and

principal due on the Class 1A-1, Class 2A-1A, Class 2A-1F, Class 2A-2, Class 2A-3 and Class 2A-4 Certificates (the "Insured Securities").

C. DLJ's Representations and Warranties Allocate Risk of Loss

40. The representations and warranties DLJ made to and for the benefit of MBIA allocated certain risk of loss in the Transaction. As the "Sponsor" of the Transaction, and the "Seller" of the loans to the Transaction, DLJ assumed the risks associated with the origination, selection and description of the loans included in the Transaction. That is, DLJ accepted the risk that its disclosures pertaining to the loans and its practices were true, accurate and complete (*i.e.*, not false or misleading), regardless of its own (or MBIA's) actual knowledge or diligence. MBIA, in turn, accepted the risk that the loans *conforming to DLJ's representations and warranties* would perform as expected.

41. This was a reasoned risk-allocation arrangement. Unlike MBIA, DLJ and its affiliates were in privity with the originators, and established the controls, protocols and criteria governing the selection of loans to acquire from the originators and securitize. DLJ also dictated the protocols and underwriting standards to which the lenders had to adhere for their loans to qualify for the DLJ securitizations. DLJ thus had the ability to manage, and did in fact actively manage, the risk associated with the origination, selection and description of the loans. In this regard, DLJ routinely obtained representations and warranties from the originators of the loans it purchased and had the ability to seek recourse for breaches of those provisions. DLJ also had the ability to reject – and Credit Suisse informed MBIA that it did in fact reject – loans that did not comply with appropriate underwriting standards.

42. Conversely, as a financial guaranty insurer, MBIA was several steps removed from the process of vetting the borrowers to whom these loans were made. Moreover, as offered, the timing of the Transaction did not contemplate or afford MBIA the opportunity to

undertake its own review of the thousands of individual loan files comprising the proposed loan pool. Thus, in order to participate, MBIA had to rely on the information Credit Suisse conveyed to MBIA about the loans and Credit Suisse's due diligence of the loans and the originators for the purpose of evaluating the risks of insuring the transaction. Accordingly, MBIA reasonably assumed only the market risk that the loans, *as represented by DLJ*, would perform.

43. DLJ made two types of representations and warranties to effectuate this risk-sharing arrangement. The representations and warranties concerned, among other things, the attributes of the Transaction loan pool in the aggregate and DLJ's mortgage-lending operations, practices and protocols and related disclosures (*i.e.*, transaction-level warranties), and each individual loan securitized in the Transaction (*i.e.*, loan-level warranties).

1. Transaction-Level Warranties

44. The transaction-level warranties were made in the Insurance Agreement[4] and include the following:

> (j) *Accuracy of Information.* Neither the Transaction Documents nor other material information relating to the Mortgage Loans, the operations of the Servicer, the Seller or the Depositor (including servicing or origination of loans) or the financial condition of the Servicer, the Seller or the Depositor or any other information (collectively, the "Documents"), as amended, supplemented or superseded, furnished to the Insurer by the Servicer, the Seller or the Depositor contains any statement of a material fact by the Servicer, the Seller or Depositor which was untrue or misleading in any material adverse respect when made. . . .
>
> (k) *Compliance with Securities Laws.* The offer and sale of the Securities comply in all material respects with all requirements of law. . . . Without limitation of the foregoing, the Offering Document does not contain any untrue statement of a material fact and does not omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading; provided, however, that no

[4] Insurance Agmt. § 2.01.

> representation is made with respect to the Insurer Information. Neither the offer nor the sale of the Securities has been or will be in violation of the Securities Act or any other federal or state securities laws.

45. As the foregoing provisions illustrate, the transaction-level warranties broadly attest that all the information provided by DLJ concerning its mortgage loans, the Credit Suisse mortgage lending operations (*e.g.*, its loan-acquisition practices, underwriting guidelines and due diligence), or used to market the Certificates (*e.g.*, the Prospectus or ProSupp), is true, accurate and complete. Any material misstatement or omission with respect to such disclosures therefore is a breach of these provisions, ***irrespective*** of whether or not DLJ knew of such misstatement or omission.

2. Loan-Level Warranties

46. The loan-level warranties were made in the Pooling and Servicing Agreement ("PSA") and explicitly incorporated by reference in the Insurance Agreement. Specifically, the Insurance Agreement[5] provides as follows:

> *Transaction Documents*. Each of the representations and warranties of the Servicer, the Seller [DLJ] and the Depositor contained in the Transaction Documents to which they are, respectively, a party is true and correct in all material respects, and the Servicer, the Seller and the Depositor hereby make each such representation and warranty to, and for the benefit of, the Insurer [MBIA] as if the same were set forth in full herein. . . .

The Insurance Agreement defines "Transaction Documents" to include the PSA.

47. In the PSA, DLJ makes numerous representations and warranties about the attributes of each loan in the Transaction, and thereby assumes the risk that those representations prove false, ***irrespective*** of DLJ's knowledge of their falsity. These representations and

[5] Insurance Agmt. §2.01(l).

warranties are found in Schedule IV to the PSA, and are made, by the PSA's express terms, for MBIA's benefit:

> The Seller [DLJ] hereby makes the representations and warranties set forth in Schedule IV as applicable hereto, and by this reference incorporated herein, to the Trustee and the Certificate Insurer[6] [MBIA], as of the Closing Date, or if so specified therein, as of the Cut-off Date or such other date as may be specified.

48. DLJ's representations and warranties in Schedule IV of the PSA include, among others, the following with respect to each loan included in the Transaction:

> (ii) Any and all requirements of any federal, state or local law ... applicable to the Mortgage Loan have been complied with in all material respects at the time it was originated and as of the Closing Date.
>
> (iv) The Mortgage Loan complies with all the terms, conditions and requirements of the originator's underwriting standards in effect at the time of origination of such Mortgage Loan, which in all material respects are in accordance with customary and prudent underwriting guidelines used by originators of closed-end second lien mortgage loans.
>
> (v) The information set forth in the Mortgage Loan Schedule, attached to the Agreement as Schedule I, is complete, true and correct in all material respects as of the Cut-off Date.
>
> (ix) The Mortgage Note and Mortgage are not subject to any right of rescission, set-off, counterclaim or defense, including, without limitation, the defense of usury, nor will the operation of any of the terms of the Mortgage Note or the Mortgage, or the exercise of any right thereunder, render the Mortgage Note or Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, and no such right of rescission, set-off, counterclaim or defense has been asserted with respect thereto.
>
> (xliv) The origination, underwriting, servicing and collection practices with respect to each Mortgage Loan have been in all respects legal, proper, prudent and customary in the mortgage lending and servicing business, as conducted by prudent lending

[6] PSA, Section 2.03(d). The PSA defines "Certificate Insurer" as "MBIA Insurance Corporation, or its successors and assigns."

> institutions which service mortgage loans of the same type in the jurisdiction in which the Mortgaged Property is located.
>
> (xlv) There is no material monetary default existing under any Mortgage or the related Mortgage Note and there is no material event that, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration under the Mortgage or the related Mortgage Note....

49. Thus, the loan-level warranties are breached by, among other violations, loans made to borrowers (i) with unreasonable stated incomes or that otherwise have no reasonable ability to repay the loan, which would contravene any underwriting guideline, and/or (ii) who falsely stated their income, which would render the information on the Mortgage Loan Schedule untrue and would constitute a breach of the terms of the borrower's Mortgage. As discussed below, the securitized loan pool is replete with such breaches and many others.

2. The Repurchase Protocol

50. DLJ agreed in the PSA that it would cure any breach of the loan-level warranties, or repurchase the breaching loan from the pool (the "Repurchase Protocol"). Specifically, Section 2.03(e) of the PSA provides, in pertinent part, as follows:

> Upon discovery by any of the parties hereto of a breach of a representation or warranty made pursuant to Section 2.03(d) that materially and adversely affects the interests of [MBIA (among others)] in any Mortgage Loan, the party discovering such breach shall give prompt notice thereof to the other parties and [MBIA]. [DLJ] hereby covenants that ... it shall cure such breach in all material respects, and if such breach is not so cured, shall, (i) if such 90-day period expires prior to the second anniversary of the Closing Date, remove such Mortgage Loan (a "Deleted Mortgage Loan") from the Trust Fund and substitute in its place a Qualified Substitute Mortgage Loan, in the manner and subject to the conditions set forth in this Section; or (ii) repurchase the affected Mortgage Loan from the Trustee at the Repurchase Price in the manner set forth below.... With respect to any representations and warranties described in this Section which are made to the best of a [DLJ's] knowledge if it is

> discovered by [MBIA (among others)] that the substance of such representation and warranty is inaccurate and such inaccuracy materially and adversely affects the value of the related Mortgage Loan or the interests of the [MBIA (among others)] therein, notwithstanding the [DLJ's] lack of knowledge with respect to the substance of such representation or warranty, such inaccuracy shall be deemed a breach of the applicable representation or warranty.

51. As an express third-party beneficiary of the PSA,[7] MBIA is entitled to enforce the Repurchase Protocol and seek redress for DLJ's failure to comply with its obligations to cure, repurchase or substitute breaching loans. But as noted below, the parties' agreement expressly provides that the Repurchase Protocol is not an exclusive remedy, and that MBIA may pursue all remedies available at law and in equity for DLJ's breaches of its obligations. *See* Insurance Agreement §5.02.

3. Contractual Remedies

52. As befitting the significance of the representations and warranties to the parties' bargain, the Insurance Agreement affords MBIA broad remedies to address breaches by DLJ of its loan-level and transaction-level warranties.

53. *All remedies at law and equity.* Section 5.02(a) of the Insurance Agreement provides that upon the occurrence of an Event of Default,[8] MBIA "may take whatever action at law or in equity as may appear necessary or desirable in its judgment to collect the amounts then due under the Transaction Documents or to enforce performance and observance of any obligation, agreement or covenant of the . . . Seller [DLJ]... under the

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[7] *See* PSA § 10.11.

[8] An "Event of Default" is defined under Section 5.01(a) of the Insurance Agreement as occurring when, among other things, "[a]ny representation or warranty made by the Servicer, the Trustee, the Seller or the Depositor hereunder or under the Transaction Documents, or in any certificate furnished hereunder or under the Transaction Documents, shall prove to be untrue or incomplete in any material respect."

Transaction Documents." Moreover, Section 5.02(b) goes on to clarify that any and all remedies available may be asserted cumulatively and without exclusion, stating that "no remedy herein conferred upon or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under the Transaction Documents or existing at law or in equity."

54. *Payment and indemnification.* Pursuant to Section 3.04(a) of the Insurance Agreement, DLJ also agreed to pay and indemnify MBIA for any and all losses, claims, demands, damages, costs, or expenses arising out of or relating to, among other things, any "misfeasance or malfeasance of, or gross negligence or theft committed by, any director, officer, employee or agent of [DLJ, among others] in connection with the Transaction." DLJ similarly agreed to pay and indemnify MBIA for any "breach by [DLJ] of any representation, warranty or covenant on the part of ... [DLJ] contained in the Transaction Documents" or "any untrue statement or alleged untrue statement of a material fact contained in the Offering Document ... or arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading...."

55. *Reimbursement.* In Section 3.03(b) of the Insurance Agreement DLJ agreed to reimburse MBIA for "payments made under the Policy arising as a result of the [DLJ's] failure to repurchase any Mortgage Loan required to be repurchased by the Seller pursuant to the PSA. In Section 3.03(c) of the Insurance Agreement, DLJ further agreed to reimburse MBIA for "any and all reasonable charges, fees, costs and expenses that the Insurer [MBIA] may reasonably pay or incur, including reasonable attorneys' and accountants' fees and

expenses in connection with . . . the enforcement or defense or preservation by the Insurer of any rights in respect of any of the Transaction Documents. . . . "

56. *Interest.* In Section 3.03(d) of the Insurance Agreement, DLJ committed to pay MBIA interest on any reimbursement amounts due.

D. SPS Attempts to Conceal Credit Suisse's Fraudulent Misrepresentations

57. To conceal Credit Suisse's malfeasance and frustrate MBIA's ability to avail itself of the Repurchase Protocol, SPS engaged in a scheme to prevent MBIA from accessing the loan origination files that were essential to MBIA's evaluation of whether the loans in the Transaction complied with CS Securities' pre-Transaction representations and DLJ's contractual representations and warranties.

58. Following the inordinate number of defaults on the loans in the Transaction—which defaults ultimately triggered MBIA's payment obligations under the Policy—MBIA sought to obtain access to loan origination files, which were in the custody of SPS, consistent with its role as servicer for the Transaction under the PSA. By letter dated August 22, 2008, MBIA wrote SPS requesting a servicing review and a review of origination files for all loans that were then 60 or more days delinquent. MBIA's rights to conduct such reviews (the "Access Rights") were express and specifically bargained for precisely so that MBIA could avail itself of the Repurchase Protocol, as well as evaluate SPS's servicing of the loan pool. In this regard, Section 3.07 of the PSA provides as follows:

> The Servicer shall afford the Depositor, the Certificate Insurer [MBIA] and the Trustee reasonable access to all records and documentation regarding the Mortgage Loans and all accounts, insurance information and other matters relating to this Agreement, such access being afforded without charge, but only upon reasonable request and during normal business hours at the office designated by the Servicer.

59. In response to MBIA's request, by a series of communications beginning with its letter dated September 18, 2008, SPS stonewalled and ultimately improperly denied MBIA the access to the loan origination files that it sought and was contractually entitled to. SPS first responded to MBIA's request by indicating that it did not have the origination files MBIA sought. When that lie was debunked, SPS objected to providing access to MBIA on various equally illegitimate grounds for the next several months, including feigned financial and operational burdensomeness and confidentiality concerns. While SPS stonewalled, the losses to MBIA mounted as its claim payments reached the hundreds of millions of dollars.

60. As it was stymied in its efforts to obtain access to the loan files, MBIA took additional steps to investigate why the loans were defaulting at such an alarming rate. In December 2008, MBIA retained a consultant to conduct an onsite review of SPS's servicing activities, as allowed by the Transaction documents. That review was also severely and improperly limited by SPS, but it nevertheless revealed that SPS had failed to adequately service the loans in the Transaction. Significantly, the consultant determined that, as the level of losses on the pool mounted, SPS *reduced* the staff dedicated to the servicing of those loans.

61. In short, SPS elected to abandon its contractual obligations to optimize the servicing fees it retained on the Transaction. Under a side agreement executed between SPS and DLJ, SPS split its servicing fees with its affiliate DLJ. Thus, while the servicing fee provided significant compensation to Credit Suisse entitities, the portion of that fee that SPS actually received did not provide it with the resources to do its job.

62. Having failed to comply with its contractual servicing obligations and refused MBIA the loan file documentation it required to assess the extent of DLJ's breaches, MBIA was left with no choice but to terminate SPS as servicer in accordance with its contractual

right to do so under the PSA. It was only after such termination in March 2009 that MBIA finally gained access to many of the origination files it first sought to obtain from SPS. As explained below, MBIA quickly discovered why SPS had been so intent on concealing the loans files: they confirmed Credit Suisse's pervasive lies about the quality of the loans in the Transaction.

63. Making matters worse, MBIA also discovered after terminating SPS that SPS's malfeasance did not end with its inadequate servicing or obfuscation of its affiliates' wrongdoing by denying MBIA access to loan files. In connection with the servicing transfer, MBIA learned that SPS had wrongfully released and thus denied MBIA access to more than 2,000 charged-off mortgage loans from the Trust to the holders of the Class X-2 Certificates, subordinated Certificates held by CS Securities.

64. Under the PSA, SPS was permitted to release charged-off loans to the holders of the Class X-2 Certificates subject to satisfying certain conditions. These "charged-off" loans were mortgages that were more than 180 days in default. The purpose of the provision in the PSA that allowed these loans to be released was to permit the removal of only those loans from the trust with respect to which SPS had made a good faith effort for a reasonable period of time to collect all that could be collected from the borrower. The Class X-2 Certificate holders could then seek to obtain recoveries from these mortgages by pursing the delinquent borrowers.

65. Before any loan could be released in this manner, certain procedures had to be followed by SPS pursuant to the terms of the PSA, and MBIA had to be provided notice of the satisfaction of those procedures. Specifically, SPS could only release those of the charged-off loans that SPS affirmatively determined it would service using "special servicing" for a prescribed period of time after charge-off. The PSA required that this determination be

evidenced by a special notice to MBIA. The special servicing under the PSA should have consisted of loss mitigation and/or recovery efforts by SPS to maximize proceeds to the Trust. SPS never engaged in any legitimate "special servicing" activity with respect to these loans post-charge-off, nor did it ever notify MBIA of its intention to do so as required by the PSA. Accordingly, SPS improperly released more than 2,000 charged off loans from the Trust to its affiliate CS Securities, all of which loans rightfully continue to constitute property of the Trust.

66. This has harmed MBIA in two ways. First, because SPS claimed that those Mortgage Loans were no longer the property of the Trust, SPS did not transfer the loan files associated with those loans to the successor servicer. As such, SPS continues to deprive MBIA of access to loan files relating to more than 2,000 defaulted loans. Without these files, it is impossible for MBIA to evaluate whether the loans were ever in compliance with Credit Suisse's representations.

67. Second, any recoveries that may be obtained with respect to these loans rightfully belong to the Trust, and therefore would be used to reimburse MBIA for claim payments it has made or to offset any future payments MBIA is required to make under its Policy. By breaching its contractual obligations with respect to the charged-off loans, SPS has improperly diverted assets from the Trust to its affiliate CS Securities.

E. MBIA Discovers Pervasive Breaches

68. MBIA retained a third-party consultant to review the files created during the origination of the securitized loans for compliance with the guidelines (at least to review those files that it was eventually able to obtain after terminating SPS). From a sample of 1,386 defaulted loans in the Transaction, MBIA identified breaches of DLJ's representations and warranties in a remarkable 1,213 loans—87%—with an aggregate principal balance of approximately $78.1 million. MBIA also reviewed a sample of 477 randomly-selected loans

from the Transaction. Of those, MBIA identified breaches of DLJ's representations and warranties with respect to 377 loans—79%—with an aggregate principal balance of approximately $20.6 million. The analysis demonstrates that breaches of representations and warranties are pervasive and exist in a comparable percentage of loans in the total securitized loan pool.

69. The breaching loans contained one or, in most cases, more than one defect that constituted a breach of one or more of DLJ's numerous representations and warranties. These defects include:

- pervasive violations of the originators' actual underwriting standards, and prudent and customary origination and underwriting practices, including (i) qualifying borrowers under reduced documentation programs who were ineligible for those programs; (ii) systemic failure to conduct the required income-reasonableness analysis for stated income loans, resulting in the rampant origination of loans to borrowers who made unreasonable claims as to their income and (iii) lending to borrowers with debt-to-income and loan-to-value ratios above the allowed maximums;

- rampant fraud, primarily involving misrepresentation of the borrower's income, assets, employment, or intent to occupy the property as the borrower's residence (rather than as an investment), and subsequent failure to so occupy the property; and

- failure by the borrower to accurately disclose his or her liabilities, including multiple other mortgage loans taken out to purchase additional investment property.

70. The number and nature of the defects identified by MBIA's review indicate clearly that the loans included in the Transaction were systematically originated with virtually no regard for the borrowers' ability or willingness to repay their obligations – the fundamental precept of mortgage lending. Rather, the review clearly indicates that borrowers were permitted or encouraged to take out loans they obviously could not afford to repay.

71. DLJ's breaches materially and adversely affected MBIA's interests in the identified loans. Loans that were not appropriately originated and underwritten, or with key attributes otherwise misrepresented, are markedly more risky and therefore less valuable than loans not suffering from such shortcomings.

72. Further, contrary to DLJ's representation in Section 2.01(k) of the Insurance Agreement, the Prospectus and ProSupp that Credit Suisse prepared to market the Insured Securities (and the same documents that Credit Suisse filed with the SEC) did not adequately or accurately disclose the true attributes of the loans (*e.g.*, the weighted average combined loan-to-value ratio, occupancy status, or debt-to-income ratio), the level of fraud and underwriting failings permeating the loan pool, the grossly deficient origination and underwriting practices of the originators of these loans, or DLJ's due-diligence practices.

73. In addition to reviewing DLJ's representations about the attributes of the loans in the pool, MBIA also enlisted a third-party consultant to review SPS's conduct as servicer; and specifically whether SPS had complied with the requirements of Section 3.01 of the PSA that it act in accordance with prudent and accepted servicing practices. This review confirmed that SPS in fact failed to adequately service the loans it was entrusted with.

74. The review commissioned by MBIA revealed that SPS' loss mitigation efforts were grossly inadequate, as it did almost nothing to contact delinquent borrowers and try to bring them current or make alternative arrangements for repayment of their debts. Notwithstanding the industry's focus on loan modifications as a loss mitigation strategy, SPS modified the loans of only a small handful of borrowers. Additionally, SPS did not send anyone to the mortgaged property to try to contact the borrower and/or to inspect the property that served as collateral for the loan. Even on those relatively rare occasions when SPS representatives

managed to contact a delinquent borrower, the representatives lacked the basic skills and training necessary to obtain any meaningful assurances of future payments on the loan. SPS also determined that certain borrowers had "no equity" in their respective properties – a designation that effectively forestalled additional collection efforts – without any evidence to support the conclusion. Further, SPS did not have a specialized group for servicing second lien loans and it was grossly understaffed for the collection and loss mitigation efforts that needed to be brought to bear on this troubled loan pool. In short, SPS utterly failed to adhere to prudent and accepted servicing practices as required by the PSA.

75. The pervasive breaches in the securitized pool are borne out by the performance of the loans since closing. As of October 31, 2009, 7,216 loans with an aggregate outstanding principal balance of approximately $464 million (or approximately 51.5% of the original pool balance) have defaulted and been charged-off, resulting in the payment by MBIA of more than $296 million in claims.

F. DLJ Frustrates the Repurchase Protocol

76. In accordance with Section 2.03(e) of the PSA, by letters dated August 5, 2009, August 27, 2009, September 9, 2009, September 29, 2009, October 13, 2009, November 3, 2009, and November 11, 2009, the Trustee gave formal notice to DLJ of the breaches that MBIA had discovered with respect to 1,214 loans. The Trustee demanded that DLJ comply with its obligations under the Repurchase Protocol and cure or repurchase the affected loans within 90 days.

77. DLJ has formally responded with respect to the first three notices and did not cure or repurchase a single one of the 564 loans identified therein within the requisite timeframe allowed under the Repurchase Protocol. Moreover, DLJ's responses reveal a bad faith disregard of its obligations under, and frustration of , the repurchase protocol.

G. Credit Suisse Has Caused and Is Causing MBIA Great Harm

78. MBIA would not have participated in the Transaction and issued its Policy had it known of CS Securities' fraud *or* DLJ's pervasive and material breaches of its representations and warranties. Credit Suisse's pervasive misrepresentations and breaches pierce the very heart of the bargain struck by the parties. The portfolio of loans Credit Suisse sold into the Transaction did not bear any resemblance to what Credit Suisse represented and warranted would be transferred. Credit Suisse's deliberate frustration of the Repurchase Protocol further compounds the harm from its breaches.

79. MBIA has incurred, and is continuing to incur, significant harm as a consequence of Credit Suisse's malfeasance, including the payment of over $296 million in claim payments through October 31, 2009, lost-opportunity costs on those amounts and the reserves MBIA must maintain relating to the future anticipated claims on the Transaction. With no alternative, MBIA was forced to commence this suit.

FIRST CAUSE OF ACTION

(Fraudulent Inducement)

80. MBIA realleges and incorporates by reference paragraphs 1 through 79 of this Complaint.

81. As set forth above, CS Securities made materially false statements and omitted material facts in email communications with MBIA with the intent to defraud MBIA.

82. MBIA reasonably relied on CS Securities' statements and omissions when it entered into the Insurance Agreement and issued the Policy.

83. As a result of CS Securities' statements and omissions, MBIA insured a pool of loans that had a risk profile far greater than CS Securities had led MBIA to believe.

84. As a result of CS Securities' false and misleading statements and omissions, MBIA has suffered, and will continue to suffer, damages including claims payments under the Policy.

85. Because CS Securities committed these acts and omissions maliciously, wantonly, oppressively, and with the knowledge that they would affect the general public—which they have—MBIA is entitled to punitive damages.

SECOND CAUSE OF ACTION

(Breach of Representations and Warranties)

86. MBIA realleges and incorporates by reference paragraphs 1 through 79 of this Complaint.

87. The Insurance Agreement is a valid and binding agreement between MBIA and DLJ.

88. The PSA is a valid and binding agreement with respect to which MBIA is an express third-party beneficiary.

89. MBIA has performed all of its obligations under the Insurance Agreement.

90. DLJ has materially breached its representations and warranties under Section 2.01 of the Insurance Agreement and Section 2.03 of the PSA.

91. MBIA has been damaged and will continue to be damaged in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Breach of Repurchase Obligation)

92. MBIA realleges and incorporates by reference paragraphs 1 through 79 of this Complaint.

93. DLJ has materially breached its obligations under Section 2.03(e) of the PSA by refusing to cure or repurchase the loans that breached DLJ's representations and warranties and with respect to which notice of breach has been provided by the Trustee to DLJ by letters dated August 5, 2009, August 27, 2009 and September 9, 2009.

94. MBIA has been damaged and will continue to be damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Breach of the Implied Duty of Good Faith and Fair Dealing)

95. MBIA realleges and incorporates by reference paragraphs 1 through 79 of this Complaint.

96. DLJ and SPS were obligated under the Insurance Agreement and PSA to act in good faith to allow MBIA to receive the benefit of its bargain under those agreements, including the right to assess and seek recovery for breaches of DLJ's representations and warranties.

97. DLJ and SPS breached their duty of good faith and fair dealing by failing to provide MBIA with access to the information necessary to effectuate the Repurchase Protocol, and thereby actively concealing the falsity of the representations and warranties made to induce MBIA to enter into the Insurance Agreement and issue its Policy.

98. MBIA has been damaged and will continue to be damaged in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

(Material Breach of the Insurance Agreement)

99. MBIA realleges and incorporates by reference paragraphs 1 through 79 of this Complaint.

100. DLJ induced MBIA to enter into the Insurance Agreement and to issue the Policy by making extensive representations and warranties concerning the loans that DLJ caused to be sold to the Trust, and by agreeing to broad remedies for breaches of those representations and warranties.

101. DLJ's representations and warranties were material to MBIA's decision to insure the Transaction, and MBIA was induced thereby to enter into the Insurance Agreement and perform its obligations thereunder.

102. DLJ's pervasive and material breach of its representations and warranties, and its frustration of the loan-level repurchase remedy, constitutes a material breach of the Insurance Agreement as a whole that has deprived MBIA of the very purpose of the parties' bargain.

103. MBIA has been damaged and will continue to be damaged in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

(Breach of Access Rights and Servicing Obligations)

104. MBIA realleges and incorporates by reference paragraphs 1 through 79 of this Complaint.

105. Pursuant to Section 3.07 of the PSA, SPS was required to provide MBIA reasonable access to all records and documentation regarding the Mortgage Loans.

106. In breach of its contractual obligations, SPS refused MBIA's reasonable request to review the loan documents and records.

107. SPS further breached its contractual obligations by failing to adhere to prudent and accepted servicing standards, as required by Section 3.01 of the PSA, and by releasing charged-off loans without complying with the provisions set forth in Section 3.11 of the PSA for releasing such loans.

108. As a result of SPS's breaches, MBIA's claim payments have been materially higher, MBIA was delayed in obtaining access to certain documentation relating to the Mortgage Loans, and it has been denied access altogether to documentation regarding other Mortgage Loans. SPS's improper tactics have made it impossible for MBIA to identify and seek to remedy promptly Credit Suisse's pervasive misconduct with respect to the Transaction. MBIA has been damaged and will continue to be damaged in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION

(Indemnification)

109. MBIA realleges and incorporates by reference paragraphs 1 through 79 of this Complaint.

110. Pursuant to Section 3.04(a) of the Insurance Agreement, MBIA is entitled to be indemnified for any and all claims, losses, liabilities, demands, damages, costs, or expenses of any nature arising out of or relating to the transaction contemplated by the Transaction Documents by reason of, among other things, (i) any negligence, bad faith, willful misconduct, misfeasance, malfeasance or theft committed by any director, officer, employee or agent of DLJ and/or (ii) a breach by DLJ of any of the representations, warranties, or covenants contained in the Transaction Documents or any untrue statement or alleged untrue statement of a material fact

contained in any Offering Document or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading.

111. DLJ has breached numerous representations, warranties, and covenants and made material misstatements and/or omissions in the Offering Documents that have caused MBIA to pay claims and incur losses, costs, and expenses, and will continue to cause MBIA to pay claims and incur losses, costs, and expenses.

EIGHTH CAUSE OF ACTION

(Reimbursement for Claim Payments, Fees, Costs and Expenses)

112. MBIA realleges and incorporates by reference paragraphs 1 through 79 of this Complaint.

113. Pursuant to Section 3.03(b) of the Insurance Agreement DLJ agreed to reimburse MBIA for payments made under the Policy arising as a result of DLJ's failure to repurchase any Mortgage Loan required to be repurchased by DLJ pursuant to the PSA.

114. Pursuant to Section 3.03(c) of the Insurance Agreement, DLJ agreed to reimburse MBIA for any and all charges, fees, costs, and expenses paid or incurred in connection with, among other things, enforcing, defending, or preserving MBIA's rights under the Transaction Documents.

115. Pursuant to Section 3.03(d) of the Insurance Agreement, DLJ agreed to pay MBIA interest on the amounts to be reimbursed under Section 3.03(b) and 3.03(c).

116. MBIA has made payments made under the Policy arising as a result of DLJ's failure to repurchase any Mortgage Loan required to be repurchased by it pursuant to the

PSA and has incurred numerous expenses, including attorneys' fees and expert fees, in order to enforce, defend, and preserve its rights under the relevant agreements.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for the following relief:

A. For an award of all legal, equitable and punitive damages, to be proven at trial, for CS Securities' fraudulent inducement of MBIA's participation in the Transaction and issuance of its Policy;

B. For an award of compensatory, consequential, and/or equitable damages, and any other damages to be proven at trial, for DLJ's pervasive and material breaches of its representations and warranties, and contractual repurchase obligation, constituting a material breach of the Insurance Agreement and frustration of the parties' bargain;

C. For an award of compensatory and/or consequential damages, and any other damages proven at trial, for SPS's pervasive and material breaches of its obligations under the PSA;

D. For an order compelling DLJ to comply with its obligations under PSA § 2.03(e), to cure, repurchase, or substitute the loans that breach its representations and warranties;

E. For an order of indemnification for the claim payments and other losses and expenses MBIA has paid or will pay in the future pursuant to Insurance Agreement § 3.04(a);

F. For an order awarding reimbursement of MBIA's claim payments and attorneys' fees, and other costs and expenses incurred in enforcing, defending, or preserving its rights under the Transaction Documents pursuant to Insurance Agreement § 3.03(b) and § 3.03(c), and interest thereon pursuant to § 3.03(d).

G. For an order of prejudgment interest; and

H. For an Order awarding MBIA such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury for all issues so triable as a matter of right.

VERIFICATION

The foregoing is true to the knowledge of the undersigned, except as to matters alleged on information and belief; as to those matters the undersigned believes the pleading to be true. Plaintiff is a corporation that is not in the county where its attorneys have their offices.

Dated: New York, New York
December 15, 2009

Respectfully submitted,

PATTERSON BELKNAP WEBB & TYLER LLP

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