

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

----- X
REPUBLIC MORTGAGE INSURANCE
COMPANY, REPUBLIC MORTGAGE :
INSURANCE COMPANY OF FLORIDA, :
and REPUBLIC INSURANCE COMPANY :
OF NORTH CAROLINA, :

09603915

Plaintiffs,

-against-

Index No.

COUNTRYWIDE FINANCIAL
CORPORATION, COUNTRYWIDE :
HOME LOANS, INC., THE BANK OF :
NEW YORK MELLON TRUST :
COMPANY, N.A., BAC HOME LOANS :
SERVICING, LP, and BANK OF :
AMERICA, N.A., as successor interest to :
COUNTRYWIDE BANK, N.A., :

SUMMONS

Plaintiffs designate New York
County as the place of trial

The basis of venue is CPLR 503(a)

Defendants.
----- X

FILED

DEC 31 2009

COUNTY CLERK'S OFFICE
NEW YORK

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action to
serve a copy of your answer, or, if the complaint is not served with this summons, to
serve a notice of appearance, on the Plaintiffs' Attorney within 20 days after service of
this summons, exclusive of the day of the service (or within 30 days after the service is
complete if this summons is not personally delivered to you within the State of New
York); and in case of your failure to appear or answer, judgment will be taken against
you by default for the relief demanded in the complaint.

Dated: New York, New York
December 31, 2009

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Defendants' addresses:

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The Bank of New York Mellon Trust Company, N.A.
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BAC Home Loans Servicing, LP
CT Corporation System, as registered agent
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Dallas, TX 75201

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CT Corporation System, as registered agent
150 Fayetteville Street
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
REPUBLIC MORTGAGE INSURANCE :
COMPANY and REPUBLIC INSURANCE :
COMPANY OF NORTH CAROLINA, :

Plaintiffs,

COMPLAINT FOR
DECLARATORY JUDGMENT

-against-

COUNTRYWIDE FINANCIAL :
CORPORATION, COUNTRYWIDE :
HOME LOANS, INC., THE BANK OF :
NEW YORK MELLON TRUST :
COMPANY, N.A., BAC HOME LOANS :
SERVICING, LP, and BANK OF :
AMERICA, N.A., as successor in interest to :
COUNTRYWIDE BANK, N.A. :

Index No.

Defendants. :

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COUNTY CLERK'S OFFICE
NEW YORK

Plaintiffs Republic Mortgage Insurance Company and Republic Insurance

Company of North Carolina, by and through their counsel Chaffetz Lindsey LLP and

Butler Rubin Saltarelli & Boyd LLP, hereby assert their Complaint as follows:

1. Plaintiffs Republic Mortgage Insurance Company and Republic Insurance Company of North Carolina (collectively "RMIC") are mortgage insurers who have issued five mortgage insurance policies that insured mortgage loans originated and/or serviced by Countrywide.

2. Countrywide's notorious lending practices have been and are the subject of numerous state and federal investigations, enforcement proceedings and lawsuits, including the lawsuits filed by eleven state attorneys general and the lawsuit filed against Countrywide's senior management team in *SEC v. Mozilo*, No. 09-03994, United States District Court for the Central District of California.

3. In its investigation of delinquent loans produced through Countrywide's shoddy lending practices, RMIC has determined that, as of the filing of this lawsuit, there have been over 1500 loans where there have been material misrepresentations concerning the insured loan, in some cases by Countrywide or with its knowing participation. As a result, RMIC has exercised its rights under the mortgage insurance policies to rescind coverage for those loans.

4. Notwithstanding the evidence of misrepresentations or negligence found in connection with the rescinded and cancelled loans, Countrywide disputes RMIC's investigation and claims review and practices and coverage determinations based upon the factual findings developed thereby, as well as its interpretation of the provisions of the mortgage insurance policies. RMIC seeks a declaration that the procedures it uses to investigate the material facts relating to the delinquent loans and claims submitted by Countrywide, including but not limited to the use of IRS filings, bankruptcy court filings, other publicly available information, and review appraisals, are consistent with the terms of the applicable mortgage insurance policies and applicable law, and are not a basis for Countrywide to challenge the rescissions or cancellations RMIC has made with respect to certificates issued under the applicable mortgage insurance policies.

THE PARTIES

5. Republic Mortgage Insurance Company is an insurance company organized under the laws of North Carolina with its principal place of business in North Carolina.

6. Republic Mortgage Insurance Company of North Carolina is an insurance company organized under the laws of North Carolina with its principal place of business in North Carolina.

7. Countrywide Financial Corporation (“CFC”) is a Delaware Corporation with its principal place of business in Calabasas, California. CFC is the named insured on one of the mortgage insurance policies at issue.

8. Countrywide Home Loans, Inc. (“CHL”) is a New York corporation whose main office is located in New York City. CHL is the named insured on certain of the certificates of insurance issued at issue in this lawsuit.

9. The Bank of New York Mellon Trust Company, N.A., as the successor in interest to The Bank of New York Trust Company, N.A. (“BNY”), is a national bank with its principal place of business in California. BNY, as trustee of three trusts, is the named insured of three of the mortgage insurance policies at issue.

10. BAC Home Loans Servicing, L.P. (“Servicing LP”), is a Texas limited partnership with its principal place of business in Texas. Servicing LP owns the servicing rights of certain loans insured by RMIC and is the named insured on certain of the certificates of insurance at issue in this lawsuit.

11. Bank of America, N.A., as successor in interest to Countrywide Bank, N.A. (“Bank of America”), is a national bank with its principal place of business in North Carolina. Bank of America is the named insured on certain of the certificates of insurance at issue in this lawsuit.

12. CFC, CHL, BNY, Servicing LP, and Bank of America shall be referred to collectively herein as “Countrywide.”

JURISDICTION AND VENUE

13. This Court has jurisdiction over the defendants pursuant to CPLR 302(a) because each of the defendants does business in the State of New York.

14. Venue is proper in this Court, pursuant to CPLR 503(a).

THE INSURANCE CONTRACTS

15. RMIC entered into several mortgage insurance contracts with Countrywide. One policy, Policy No. 6854, provides mortgage insurance coverage for individual loans originated by Countrywide, and the remaining policies provide mortgage insurance coverage for a portfolio of mortgage loans originated or controlled by Countrywide.

The 6854 Insurance Policy

16. As of February 28, 1986, RMIC entered into Policy No. 6854 (the "6854 Policy") with Countrywide Funding Corporation. On March 11, 1996, the insured under the 6854 Policy was changed to CHL, and on September 2, 2005, the insured under the 6854 Policy was changed to defendant CFC and its subsidiaries.

17. Under the 6854 Policy, RMIC agreed to insure CFC against certain losses CFC would incur upon the failure of its borrowers to repay home mortgage loans. The 6854 Policy applied to "flow business."

18. In order for a mortgage loan to be insured under the 6854 Policy, CFC was first required to either submit to RMIC a properly completed application that RMIC would underwrite, or to submit a properly completed alternative form of application that CFC had underwritten on RMIC's behalf. If RMIC approved an application for

insurance coverage for a loan, RMIC would issue a certificate evidencing such coverage to the owner and/or servicer of the loan.

19. Section 2.2 of the 6854 Policy contains CFC's representations to RMIC that: (i) all statements made and information provided to RMIC in an application or in any insurance certificate or commitment have been made and presented for and on behalf of CFC; and (ii) all such statements and information provided to RMIC are not false or misleading in any material respect as of the date or dates on which they are made or provided to RMIC, and do not omit any fact necessary in order to make such statements and information not false or misleading in any material respect as of such date or dates.

20. CFC understood and agreed that: (i) the statements and information it provided to RMIC were material to RMIC's decision to offer, provide, or continue to provide insurance coverage for CFC's loans; (ii) RMIC issued the certificates insuring CFC's loans, and continued the coverage of those loans, in reliance on the accuracy and completeness of CFC's statements and information submitted to it; and (iii) RMIC's reliance on CFC's representations survive the issuance of the insurance certificates.

21. In lieu of a completed application (including supporting statements, documents, and information) for each loan to be insured under the 6854 Policy, RMIC agreed to accept CFC's certification as to the characteristics of the loan. CFC agreed that RMIC was entitled to rely fully on that certification in making its determination of whether to insure the loan. CFC also agreed that RMIC's reliance upon that certification "shall not waive or change the other terms and conditions" of the 6854 Policy or CFC's responsibility for the accuracy of the statements, documents, and information submitted by it, or others on its behalf, to RMIC.

22. The 6854 Policy, as amended by its Origination of Loan Endorsement, provided that coverage for a loan would be incontestable—*i.e.*, RMIC would not deny a claim, nor would any certificate's coverage be rescinded or cancelled, by reason of any misrepresentation contained in the application for the insurance for that loan—provided that the following conditions were met:

(i) the borrower made the first 12 consecutive full installment payments of principal, interest, and impound or escrow amounts in the amounts as called for by the loan, and all those payments were made from the borrower's own funds; and

(ii) the misrepresentation was not knowingly made or knowingly participated in by: (1) the insured or any other person who originated or processed the loan; (2) any correspondent lender, mortgage broker, or other intermediary underwriting or processing the loan on behalf of the insured or any other person who originated the loan; (3) an escrow or closing agent, or any other agent of, or broker for, the insured or any other person who originated or processed the loan or acted with respect to the loan; or (4) an appraiser, provider of automated valuation model, or any other person providing a valuation of the borrower's property that is used in underwriting, processing, or originating the loan.

23. On June 7, 2006, at Countrywide's request, RMIC amended the Origination of Loan Endorsement to the 6854 Policy to delete the requirement that the borrower make twelve consecutive monthly payments before "incontestability" becomes effective.

24. Even if coverage for a loan was incontestable based solely upon a misrepresentation by the borrower, RMIC could still deny a claim or rescind or cancel a certificate of insurance for reasons other than the borrower's misrepresentation, including but not limited to misrepresentations made by: (i) the insured; (ii) persons who originated or processed the loan; (iii) any correspondent lender; (iv) any mortgage broker; (v) any intermediary underwriting or processing the loan on behalf of the insured or any other person which originated the loan; (vi) an escrow or closing agent; (vii) any other agent of, or broker for, the insured or other person which originated or processed the loan or acted with respect to the loan; or (viii) an appraiser or any other person providing a valuation of the property that is used in the underwriting, processing, or originating the loan. Indeed, the fact that coverage for a loan was incontestable did not preclude RMIC from invoking any of its other rights under the mortgage insurance policy to deny a claim or rescind insurance coverage for a loan.

The 06L75-00 Bulk Insurance Policy

25. On December 8, 2006, RMIC, CHL, and BNY, in its capacity as Co-Trustee for CWABS 2006-23, a trust containing securitized mortgage loans, executed a letter of intent under which RMIC submitted its offer to provide mortgage insurance for a portfolio of 553 single-family residential mortgage loans originated by Countrywide.

26. Prior to signing that letter, Countrywide provided information to RMIC regarding those loans, including the number of loans in the pool, the total unpaid principal balance of those loans, the nature of the mortgage loans in the pool, the maximum loan-to-value ratio of the loans, the maximum debt-to-income ratio of the loans in the pool, and the debt-to-income ratio for each of the loans in the pool.

27. The December 8, 2006 Letter of Intent provided that RMIC's offer to provide mortgage insurance for that loan portfolio was based entirely on information provided by Countrywide, and that RMIC was relying upon the accuracy and integrity of that information. Countrywide acknowledged that RMIC would not typically verify that information before coverage began and that if RMIC determined that the information was materially inaccurate after coverage began, RMIC had the right to reduce or rescind coverage and/or deny claims with respect to the loans in the pool. Countrywide agreed that this portion of the Letter of Intent was binding upon it.

28. The Letter of Intent also provided that the mortgage insurance policy issued for that portfolio of loans would be amended by endorsement so that all provisions regarding the incontestability of the insurance coverage for the mortgage loans would be deleted.

29. The Letter of Intent further provided that the parties would execute a Confirmation Letter that would, in part, set forth certain criteria RMIC required the insured loans to meet, including but not limited to debt-to-income ratios, loan-to-value ratios, and minimum financial standards for each borrower.

30. As of December 1, 2006, RMIC and BNY, in its capacity as Co-Trustee for CWABS 2006-23, entered into Policy No. 06L75-00 (the "06L75-00 Bulk Policy") under which RMIC provided mortgage insurance to BNY for that portfolio of single-family residential mortgage loans.

31. Under the terms of the 06L75-00 Bulk Policy, both the Letter of Intent and Confirmation Letter were defined to be part of the Application for that policy.

32. The 06L75-00 Bulk Policy included the Endorsement To Mortgage Guaranty Master Policy Lender Paid Portfolio Loans which, in part, provided that “Section 2.4 of this Policy, and any similar provisions allowing for incontestability of coverage for certain misrepresentations which may be contained in any endorsements attached to this Policy” were deleted in their entirety.

33. As a result, RMIC was able to rescind or cancel a certificate issued under the 06L75-00 Bulk Policy based upon a misrepresentation made by: (i) the insured; (ii) persons who originated or processed the loan; (iii) any correspondent lender; (iv) any mortgage broker; (v) any intermediary underwriting or processing the loan on behalf of the insured or any other person which originated the loan; (vi) an escrow or closing agent; (vii) any other agent of, or broker for, the insured or other person which originated or processed the loan or acted with respect to the loan; or (viii) an appraiser or any other person providing a valuation of the property that is used in the underwriting, processing, or originating the loan.

The 06L75-01 Bulk Insurance Policy

34. On December 29, 2006, RMIC, CHL, and BNY, in its capacity as Co-Trustee for CWABS 2006-24, a trust containing securitized mortgage loans, executed a letter of intent under which RMIC submitted its offer to provide mortgage insurance for a portfolio of 690 single-family residential mortgage loans originated by Countrywide.

35. Prior to signing that letter, Countrywide provided information to RMIC regarding those loans, including the number of loans in the pool, the total unpaid principal balance of those loans, the nature of the mortgage loans in the pool, the

maximum loan-to-value ratio of the loans, the maximum debt-to-income ratio of the loans in the pool, and the debt-to-income ratio for each of the loans in the pool.

36. The December 29, 2006 Letter of Intent provided that RMIC's offer to provide mortgage insurance for that loan portfolio was based entirely on information provided by Countrywide, and that RMIC was relying upon the accuracy and integrity of that information. Countrywide acknowledged that RMIC would not typically verify that information before coverage began and that if RMIC determined that the information was materially inaccurate after coverage began, RMIC had the right to reduce or rescind coverage and/or deny claims with respect to the loans in the pool. Countrywide agreed that this portion of the Letter of Intent was binding upon it.

37. The Letter of Intent also provided that the mortgage insurance policy issued for that portfolio of loans would be amended by endorsement so that all provisions regarding the incontestability of the insurance coverage for the mortgage loans would be deleted.

38. The Letter of Intent further provided that the parties would execute a Confirmation Letter that would, in part, set forth certain criteria RMIC required the insured loans to meet, including but not limited to debt-to-income ratios, loan-to-value ratios, and minimum financial standards for each borrower.

39. As of December 1, 2006, RMIC and BNY, in its capacity as Co-Trustee for CWABS 2006-24, entered into Policy No. 06L75-01 (the "06L75-01 Bulk Policy") under which RMIC provided mortgage insurance to BNY for that portfolio of single-family residential mortgage loans.

40. Under the terms of the 06L75-01 Bulk Policy, both the Letter of Intent and Confirmation Letter were defined to be part of the Application for that policy.

41. The 06L75-01 Bulk Policy included the Endorsement To Mortgage Guaranty Master Policy Lender Paid Portfolio Loans which, in part, provided that “Section 2.4 of this Policy, and any similar provisions allowing for incontestability of coverage for certain misrepresentations which may be contained in any endorsements attached to this Policy” were deleted in their entirety.

42. As a result, RMIC was able to rescind or cancel a certificate issued under the 06L75-01 Bulk Policy based upon a misrepresentation made by: (i) the insured; (ii) persons who originated or processed the loan; (iii) any correspondent lender; (iv) any mortgage broker; (v) any intermediary underwriting or processing the loan on behalf of the insured or any other person which originated the loan; (vi) an escrow or closing agent; (vii) any other agent of, or broker for, the insured or other person which originated or processed the loan or acted with respect to the loan; or (viii) an appraiser or any other person providing a valuation of the property that is used in the underwriting, processing, or originating the loan.

The 06L75-02 Bulk Insurance Policy

43. On December 29, 2006, RMIC, CHL, and BNY, in its capacity as Co-Trustee for CWABS 2006-25, a trust containing securitized mortgage loans, executed a letter of intent under which RMIC submitted its offer to provide mortgage insurance for a portfolio of 527 single-family residential mortgage loans originated by Countrywide.

44. Prior to signing that letter, Countrywide provided information to RMIC regarding those loans, including the number of loans in the pool, the total unpaid

principal balance of those loans, the nature of the mortgage loans in the pool, the maximum loan-to-value ratio of the loans, the maximum debt-to-income ratio of the loans in the pool, and the debt-to-income ratio for each of the loans in the pool.

45. The December 29, 2006 Letter of Intent provided that RMIC's offer to provide mortgage insurance for that loan portfolio was based entirely on information provided by Countrywide, and that RMIC was relying upon the accuracy and integrity of that information. Countrywide acknowledged that RMIC would not typically verify that information before coverage began and that if RMIC determined that the information was materially inaccurate after coverage began, RMIC had the right to reduce or rescind coverage and/or deny claims with respect to the loans in the pool. Countrywide agreed that this portion of the Letter of Intent was binding upon it.

46. The Letter of Intent also provided that the mortgage insurance policy issued for that portfolio of loans would be amended by endorsement so that all provisions regarding the incontestability of the insurance coverage for the mortgage loans would be deleted.

47. The Letter of Intent further provided that the parties would execute a Confirmation Letter that would, in part, set forth certain criteria RMIC required the insured loans to meet, including but not limited to debt-to-income ratios, loan-to-value ratios, and minimum financial standards for each borrower.

48. As of December 1, 2006, RMIC and BNY, in its capacity as Co-Trustee for CWABS 2006-25, entered into Policy No. 06L75-02 (the "06L75-02 Bulk Policy") under which RMIC provided mortgage insurance to BNY for that portfolio of single-family residential mortgage loans.

49. Under the terms of the 06L75-02 Bulk Policy, both the Letter of Intent and Confirmation Letter were defined to be part of the Application for that policy.

50. The 06L75-02 Bulk Policy included the Endorsement To Mortgage Guaranty Master Policy Lender Paid Portfolio Loans which, in part, provided that “Section 2.4 of this Policy, and any similar provisions allowing for incontestability of coverage for certain misrepresentations which may be contained in any endorsements attached to this Policy” were deleted in their entirety.

51. As a result, RMIC was able to rescind or cancel a certificate issued under the 06L75-02 Bulk Policy based upon a misrepresentation made by: (i) the insured; (ii) persons who originated or processed the loan; (iii) any correspondent lender; (iv) any mortgage broker; (v) any intermediary underwriting or processing the loan on behalf of the insured or any other person which originated the loan; (vi) an escrow or closing agent; (vii) any other agent of, or broker for, the insured or other person which originated or processed the loan or acted with respect to the loan; or (viii) an appraiser or any other person providing a valuation of the property that is used in the underwriting, processing, or originating the loan.

The 6854-42 Bulk Policy

52. On September 26, 2007, RMIC and CHL executed a letter of intent under which RMIC submitted its offer to provide mortgage insurance for a portfolio of 14 single-family residential mortgage loans originated by Countrywide.

53. Prior to signing that letter, Countrywide provided information to RMIC regarding those loans, including the number of loans in the pool, the total unpaid principal balance of those loans, the nature of the mortgage loans in the pool, the

maximum loan-to-value ratio of the loans, the maximum debt-to-income ratio of the loans in the pool, and the debt-to-income ratio for each of the loans in the pool.

54. The September 26, 2007 Letter of Intent provided that RMIC's offer to provide mortgage insurance for that loan portfolio was based entirely on information provided by Countrywide, and that RMIC was relying upon the accuracy and integrity of that information. Countrywide acknowledged that RMIC would not typically verify that information before coverage began and that if RMIC determined that the information was materially inaccurate after coverage began, RMIC had the right to reduce or rescind coverage and/or deny claims with respect to the loans in the pool. Countrywide agreed that this portion of the Letter of Intent was binding upon it.

55. The Letter of Intent further provided that the parties would execute a Confirmation Letter that would, in part, contain CHL's representations and warranties to RMIC that as of September 1, 2007, that certain listed information regarding the loans in the portfolio was true, including the nature and location of the properties securing the loans, the maximum loan-to-value ratio of the loans, the maximum debt-to-income ratio of the loans, the absence of simultaneous second liens, compliance with state and federal lending laws, and the maximum number of days loan payments were past due.

56. The Confirmation Letter also provided that Paragraph B of the Endorsement To Mortgage Guaranty Master Policy Lender Paid Portfolio Loans and Paragraph 2.4 of the Origination of Loan Endorsement be deleted. As a result, insurance coverage for these 14 loans was incontestable as of the effective date of the certificates of insurance for those loans. The deletions to those two endorsements were made at CHL's request.

57. As of September 1, 2007, RMIC and CHL entered into Policy No. 6854-42 (the “6854-42 Bulk Policy”) under which RMIC provided mortgage insurance to CHL for that portfolio of single-family residential mortgage loans.

COUNT I
DECLARATORY JUDGMENT ON SCOPE
AND APPLICABILITY OF INCONTESTIBILITY PROVISIONS

58. RMIC incorporates paragraph 1 through 57 as if fully set forth herein.

59. An actual dispute has arisen between RMIC and Countrywide regarding the applicability of a letter RMIC issued to Countrywide on June 7, 2006, to mortgage insurance policies other than the 6854 Policy.

60. In or about May 2006, Countrywide requested RMIC to amend “bulk and flow” mortgage insurance policies issued to Countrywide to provide that insurance coverage for the mortgage loans would be incontestable, regardless of any misrepresentation made by the borrower in the insurance application or supporting documentation, as of the date the insurance certificate was first issued for that loan.

61. RMIC agreed to amend one policy only—the 6854 Policy. On June 7, 2006, RMIC issued a letter that deleted paragraph a of Section 2.4 of the Origination of Loan Endorsement. Therefore, insurance coverage under certificates issued pursuant to the 6854 Policy would be incontestable, *i.e.*, a claim would not be denied nor a certificate of insurance rescinded or cancelled *solely* by reason of any misrepresentation made by the borrower in the insurance application or supporting documentation, as of the day the insurance certificate was issued. All other provisions in Section 2.4 of the Origination of Loan Endorsement, as well as all the other provisions of the 6854 Policy, including Sections 2.2, 2.3, and 4.4, remained in effect.

62. However, RMIC did not agree to make the requested amendment to any mortgage insurance policy other than the 6854 Policy.

63. Moreover, the June 7, 2006 amendment to the 6854 Policy could not have applied to the 65L75-00 Bulk Policy, the 65L75-01 Bulk Policy, or the 65L75-02 Bulk Policy because all three of these policies were issued after the June 7, 2006 letter was sent to Countrywide.

64. Further, by its own terms, the June 7, 2006 amendment to the 6854 Policy could not have applied to either the 65L75-00 Bulk Policy, the 65L75-01 Bulk Policy, or the 65L75-02 Bulk Policy. The June 7, 2006 letter deleted Paragraph a of Section 2.4 of the Origination of Loan Endorsement, which provided for incontestability after the borrower made twelve consecutive loan payments. However, at the time each of those three bulk policies were issued, one of the endorsements—the Endorsement To Mortgage Guaranty Master Policy Lender Paid Portfolio Loans—specifically deleted Section 2.4 in its entirety (and any provision for incontestability) from the Origination of Loan endorsement. Therefore, there was no provision in any of the bulk insurance policies that could have been amended by the June 7, 2006 letter. As a result, the terms of the 65L75-00 Bulk Policy, the 65L75-01 Bulk Policy, and the 65L75-02 Bulk Policy permit RMIC to rescind or cancel insurance coverage for any mortgage loan based upon a borrower's misrepresentation, as well as based upon Countrywide's own misrepresentation.

65. Countrywide accepted the terms of the 65L75-00 Bulk Policy, the 65L75-01 Bulk Policy, and the 65L75-02 Bulk Policy, including the terms set forth in the Endorsement To Mortgage Guaranty Master Policy Lender Paid Portfolio Loans.

66. Countrywide was also aware that the June 7, 2006 letter did not apply to the 65L75-00 Bulk Policy, the 65L75-01 Bulk Policy, or the 65L75-02 Bulk Policy because when CHL signed the September 1, 2007 Letter of Intent for the 6854-42 Bulk Policy, it specifically requested that the insurance coverage for the 14 loans covered by that letter be made incontestable.

67. Notwithstanding those facts, Countrywide asserts that the June 7, 2006, letter amended not only the 6854 Policy, but also amended the 65L75-00 Bulk Policy, the 65L75-01 Bulk Policy, and the 65L75-02 Bulk Policy.

68. In addition to being the insured under certificates issued pursuant to the 6854 Policy, the 65L75-00 Bulk Policy, the 65L75-01 Bulk Policy, or the 65L75-02 Bulk Policy, Countrywide is also insured under certificates assigned to it for loans made by non-party lenders, who has been issued mortgage insurance policies, and certificates thereunder, directly by RMIC, where: (i) Countrywide purchased the loans from the non-party lenders; or (ii) the servicing rights for the non-party lenders' loans were transferred to Countrywide.

69. Countrywide further asserts that the June 7, 2006, letter also amended numerous other mortgage insurance policies that RMIC issued to those non-party lenders who sold the loans, or transferred the servicing rights to the loans, to Countrywide.

70. The June 7, 2006 letter did not purport to amend the numerous other policies issued by RMIC to other non-party lenders, nor did the letter discuss or refer to certificates issued under those other mortgage insurance policies that were initially issued to those non-party lenders.

71. Based on these false assertions, Countrywide contends that as of June 7, 2006, all mortgage insurance issued by RMIC pursuant to the 6854 Policy, the 65L75-00 Bulk Policy, the 65L75-01 Bulk Policy, the 65L75-02 Bulk Policy, or the other mortgage insurance policies issued by RMIC to non-party lenders who sold loans, or transferred the servicing rights to loans, to Countrywide, is incontestable as of the date the certificate of insurance for a mortgage loan was first issued and, therefore, that RMIC cannot deny any claim made by Countrywide, nor can RMIC rescind or cancel any certificate's coverage, by reason of the borrower's misrepresentation contained in the application for the insurance for the given loan.

72. RMIC, on the other hand, contends that the June 7, 2006, letter applies only to certificates of insurance issued under the 6854 Policy, and that the letter had no effect on the terms of the 65L75-00 Bulk Policy, the 65L75-01 Bulk Policy, the 65L75-02 Bulk Policy, or any other mortgage insurance policies and certificates that RMIC issued to non-party lenders.

**COUNT II
DECLARATORY JUDGMENT ON CLAIM PRACTICES**

73. RMIC incorporates paragraphs 1 through 72 as if fully set forth herein.

74. An actual dispute has arisen between RMIC and Countrywide regarding RMIC's rescission of certificates of insurance issued under the 6854 Policy, the 65L75-00 Bulk Policy, the 65L75-01 Bulk Policy, the 65L75-02 Bulk Policy, the 6854-42 Bulk Policy, or the other mortgage insurance policies issued by RMIC to non-party lenders who sold loans, or transferred the servicing rights to loans, to Countrywide.

75. Section 2.2 of the applicable mortgage insurance policies contains the insured's representations to RMIC that: (i) all statements made and information provided

to RMIC in an application or in any insurance certificate or commitment have been made and presented for and on behalf of the insured; and (ii) all such statements and information provided to RMIC are not false or misleading in any material respect as of the date or dates on which they are made or provided to RMIC, and do not omit any fact necessary in order to make such statements and information not false or misleading in any material respect as of such date or dates.

76. Section 2.3 of the applicable mortgage insurance policies provides that if any of the insured's representations contained in Section 2.2 are materially false or misleading with respect to a mortgage loan, RMIC has the right to cancel or rescind coverage under a certificate of insurance retroactively to the commencement of coverage.

77. Similarly, Section 4.4 of the applicable mortgage insurance policies provides that RMIC is not liable for any claim not otherwise within the scope of Section 2.3 where there was fraud, misrepresentation, or negligence by the insured with respect to the insured mortgage loan that either contributed to the default or increased the loss under a claim.

78. Under the terms of the applicable mortgage insurance policies, any misrepresentation by the insured relating to the mortgage loan is grounds to rescind the certificate of insurance relating to that loan.

79. When Countrywide notifies RMIC of a delinquent loan, RMIC conducts a thorough investigation to determine if the loss is covered and whether there was any misrepresentation or negligence in connection with the defaulted loan.

80. RMIC investigates the material facts set forth in the application for the mortgage insurance for the defaulted loan, including but not limited to loan-to-value

ratio, income, employment history, borrower's assets, borrower's liabilities, the borrower's credit history, and property value.

81. RMIC also retains counsel to review the results of the investigation and to make a recommendation to RMIC as to whether there are grounds to rescind the certificate of insurance for that loan.

82. If RMIC determines that there are grounds to rescind a certificate of insurance, it advises Countrywide of the factual basis for doing so in a letter sent to it by RMIC's Claims Group Manager.

83. During 2008, RMIC rescinded 531 certificates of insurance issued or assigned to Countrywide. Between January 1, 2009, and November 30, 2009, RMIC rescinded 1,087 certificates of insurance issued or assigned to Countrywide. In each instance, RMIC properly rescinded coverage, either based upon either a material misrepresentation by the borrower or a material misrepresentation or negligence by the insured, correspondent lender, mortgage broker, intermediary underwriting or processing the loan on behalf of the insured, escrow agent, closing agent, any other agent or broker for the insured or other person which originated or processed the loan or acted with respect to the loan, or an appraiser or other person providing a valuation of the property that is used in the underwriting, processing, or origination of the loan.

84. Countrywide contends that RMIC improperly rescinded those certificates of insurance because Countrywide wrongly asserts that the mortgage insurance for those mortgage loans is incontestable. Countrywide also disputes RMIC's methods of investigating the material facts set forth in the application for mortgage insurance for the loan and disagrees with RMIC as to the level of proof needed to deny a claim or to

rescind a certificate of insurance. In connection with these disputes, Countrywide has rarely offered any new or additional facts contradicting the bases of RMIC's rescissions. On the rare occasion that Countrywide has provided a legitimate factual basis for reconsidering the rescission of a certificate, RMIC has considered those facts and, if warranted, reinstated coverage for that certificate.

85. Countrywide also disputes RMIC's interpretation of certain provisions of the applicable mortgage insurance policies and the applicable eligibility requirements, including maximum debt-to-income ratio requirements, for mortgage loans covered by those policies.

86. As set forth above, RMIC contends that: (i) the mortgage insurance provided under the 65L75-00 Bulk Policy, the 65L75-01 Bulk Policy, the 65L75-02 Bulk Policy, or the other mortgage insurance policies issued by RMIC to non-party lenders who sold loans, or transferred the servicing rights to loans, to Countrywide is not incontestable and, therefore, can be rescinded based upon a borrower's misrepresentation; (ii) Sections 2.2, 2.3, 2.4, and 4.4 of these policies permit RMIC to rescind mortgage insurance coverage for a loan for reasons other than the borrower's misrepresentation, including but not limited to misrepresentations made by: the insured; persons who originated or processed the loan; any correspondent lender; any mortgage broker; any intermediary underwriting or processing the loan on behalf of the insured or any other person which originated the loan; an escrow or closing agent; any other agent of, or broker for, the insured or other person which originated or processed the loan or acted with respect to the loan; or an appraiser or any other person providing a valuation of the property that is used in the underwriting, processing, or originating the loan; and (iii)

RMIC's reliance on the review appraisals and its methods of investigating a borrower's income and assets are appropriate and consistent with the terms of the mortgage insurance policies.

WHEREFORE, plaintiffs Republic Mortgage Insurance Company and Republic Insurance Company of North Carolina request this Court:

- a. to declare that the June 7, 2006, letter amended solely the terms of the 6854 Policy and applies only to certificates issued under the 6854 Policy;
- b. to declare that the June 7, 2006, letter does not apply to, nor did it amend the terms of, the 65L75-00 Bulk Policy;
- c. to declare that the June 7, 2006, letter does not apply to, nor did it amend the terms of, the 65L75-01 Bulk Policy;
- d. to declare that the June 7, 2006, letter does not apply to, nor did it amend the terms of, the 65L75-02 Bulk Policy;
- e. to declare that the June 7, 2006, letter does not apply to, nor did it amend the terms of, any mortgage insurance policy issued by RMIC to non-party lenders who sold loans, or transferred the servicing rights to loans, to Countrywide;
- f. to declare that RMIC's procedures used to investigate the material facts relating to the delinquent loans and claims submitted by Countrywide, including but not limited to the use of IRS filings, bankruptcy court filings, other publicly available information, and review appraisals, are consistent with the terms of the applicable

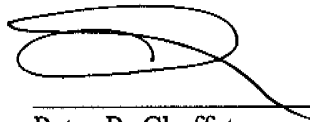
mortgage insurance policies and applicable law, and are not a basis for Countrywide to challenge the rescissions or cancellations RMIC has made with respect to certificates issued under the applicable mortgage insurance policies; and

g. to award such other relief as the Court deems just and appropriate.

Dated: New York, NY
December 31, 2009

PLAINTIFFS REPUBLIC MORTGAGE INSURANCE
COMPANY AND REPUBLIC INSURANCE COMPANY
OF NORTH CAROLINA

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