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16 Deutsche Bank National Trust Company, as Trustee for  
17 certain residential mortgage-backed securitization trusts  
18 sponsored by IndyMac Bank, F.S.B.

19 UNITED STATES DISTRICT COURT  
20 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

21 **Deutsche Bank National Trust**  
22 **Company**, as Trustee for certain  
23 residential mortgage-backed  
24 securitization trusts sponsored by  
25 IndyMac Bank, F.S.B.,

26 Plaintiff,

27 vs.

28 **Federal Deposit Insurance**  
**Corporation**, as Receiver of IndyMac  
Bank, F.S.B.; Federal Deposit  
Insurance Corporation, as Conservator  
and Receiver of IndyMac Federal Bank  
F.S.B.; Federal Deposit Insurance  
Corporation, in its corporate capacity;  
and Federal Deposit Insurance  
Corporation, as Government Entity,

Defendants.

FILED

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CLERK OF DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

Case No. CV09-3852

GAF  
(FFM)

**COMPLAINT FOR BREACH OF  
CONTRACT; REPUDIATION;  
BREACH OF THE DUTY OF GOOD  
FAITH AND FAIR DEALING;  
BREACH OF FIDUCIARY DUTY;  
AND UNCONSTITUTIONAL  
TAKING**

**DEMAND FOR JURY TRIAL**

I.

INTRODUCTION

1  
2  
3 1. This is an action by Deutsche Bank National Trust Company  
4 (“DBNTC”) as trustee of more than 240 mortgage securitization trusts (each one a  
5 “Trust,” and collectively the “Trusts”) created by IndyMac Bank, F.S.B.  
6 (“IndyMac”). As more fully set forth herein, IndyMac breached its promises to the  
7 Trusts before it failed and was placed in receivership with the Federal Deposit  
8 Insurance Corporation (the “FDIC”) in July of 2008. DBNTC brings this action  
9 against the FDIC as a successor to IndyMac in several capacities as described  
10 below. This Court has subject matter jurisdiction over this action pursuant to, inter  
11 alia, the Constitution of the United States, 28 U.S.C. § 1331, 12 U.S.C. §§ 1819(a),  
12 1819(b)(2)(A) and 1821(d)(6), 28 U.S.C. § 1367, and 28 U.S.C. § 1349.

13 2. This action follows the FDIC’s disallowance of an administrative  
14 proof of claim filed with the FDIC in the receivership by DBNTC as Trustee on  
15 behalf of Trust investors seeking essentially the same relief requested herein.

16 3. IndyMac created substantially all of the Trusts at issue in this action  
17 and did so in a manner designed to make itself the dominant actor in the creation  
18 and ongoing management of the Trusts’ assets. IndyMac originated or acquired the  
19 mortgage loans that became the principal assets of the Trusts, caused the Trusts to  
20 be formed, made promises about the quality and servicing of the mortgage loans,  
21 serviced the mortgage loans before and after their sale into the Trusts, promised to  
22 handle the defective mortgage loans, and performed duties for the Trusts. In doing  
23 so, IndyMac promoted the benefits of having a single entity handle all of these  
24 functions..

25 4. IndyMac breached its promises before it failed. The FDIC is now  
26 IndyMac’s successor in several capacities and is liable for IndyMac’s pre-failure  
27 breaches.



1 subsidiary or related fiduciary arrangements (collectively, the “Governing  
2 Agreements”) for over 240 Trusts created by IndyMac between 2001 and 2007, and  
3 identified on Exhibit 1 hereto.

4 10. The Trusts currently hold, as Trust assets or collateral, more than  
5 150,000 mortgage loans that IndyMac originated or acquired, serviced, and sold  
6 into the Trusts. As of the date that IndyMac was placed in receivership, the loans  
7 had an aggregate outstanding principal balance of over \$81 billion.

8 11. The Trustee brings this action for and on behalf of the Trusts, the  
9 investors in the Trusts, and itself as Trustee.

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

15 13. On information and belief, the Trusts’ investors include state and local  
16 governments, federal government-sponsored entities, retirement plans (such as the  
17 Police & Fire Retirement System of the City of Detroit and the Orange County  
18 Public Employees Union Fund), mutual funds, insurance companies, and other  
19 investors residing throughout the United States and the world.

20 14. Defendant FDIC is an agency of the United States created by the  
21 Federal Deposit Insurance Act, 12 U.S.C. § 1811 et seq. and related laws and  
22 regulations. The FDIC acts, from time to time, as a receiver and/or conservator of  
23 banking institutions, as an insurer of bank deposits, and as a banking regulator.

24 15. The FDIC is an independent agency of the United States government.  
25 It receives no Congressional appropriations and is funded by premiums that banks  
26 and thrift institutions pay for deposit insurance coverage and from earnings on  
27 investments in U.S. Treasury securities. It has an insurance fund totaling more than  
28 \$45 billion and insures more than \$5 trillion of deposits in U.S. banks and thrifts.



1 IV.

2 FACTUAL BACKGROUND

3 A. IndyMac and Its Successors

4 20. Until July 11, 2008, IndyMac was an FDIC-insured federal savings  
5 bank chartered and regulated by the Office of Thrift Supervision (the “OTS”).

6 21. On July 11, 2008, the Director of the OTS, by Order Number 2008-24,  
7 closed IndyMac and appointed the FDIC as IndyMac’s receiver.

8 22. In the same Order, the OTS authorized the creation of a new federally-  
9 chartered savings bank, IndyMac Federal, for which the FDIC was appointed as  
10 conservator.

11 23. On information and belief, on July 11, 2008, a purchase and  
12 assumption agreement was entered into by and among: the FDIC as receiver of  
13 IndyMac; the FDIC in its corporate capacity; and the FDIC as conservator of  
14 IndyMac Federal. Pursuant to that purchase and assumption agreement,  
15 substantially all of IndyMac’s assets and liabilities, including its operational  
16 platform, its personnel and many of its ongoing operations, were purportedly  
17 transferred to and assumed by IndyMac Federal. The purportedly transferred assets  
18 and liabilities included all of IndyMac’s interests, rights and obligations with  
19 respect to the securitization Trusts evidenced by the Governing Agreements.

20 24. For more than 8 months thereafter, the FDIC operated the business of  
21 IndyMac, specifically purporting to perform the obligations and to be entitled to  
22 take (and taking) the rights and benefits associated with the Governing Agreements  
23 and related to the Trusts.

24 25. On information and belief, on or before March 19, 2009, OneWest  
25 Bank, F.S.B., a Pasadena, California-based federal savings bank, was formed by  
26 IMB HoldCo LLC (“IMB HoldCo”), a thrift holding company controlled by IMB  
27 Management Holding LP, for the primary purpose of purchasing the assets and  
28 liabilities of IndyMac Federal.

1           26. On information and belief, on or about March 19, 2009, a purchase and  
2 assumption agreement and certain related agreements were entered into by and  
3 among: the FDIC as conservator of IndyMac Federal; IMB HoldCo; and OneWest  
4 Bank F.S.B. or one or more of its affiliates (collectively "OneWest"). Pursuant to  
5 these agreements, substantially all of IndyMac Federal's assets and liabilities,  
6 including its operational platform, its personnel, and some, but not all, of the assets  
7 relating to all but three of the Trusts were purportedly transferred to and assumed  
8 by OneWest.

9           27. On March 19, 2009, the Director of the OTS, by Order Number 2009-  
10 17, removed the FDIC as conservator for IndyMac Federal and made the FDIC the  
11 receiver for IndyMac Federal. The term "conservator" is used in this Complaint to  
12 address both roles the FDIC occupied with respect to IndyMac Federal to avoid  
13 confusion with references to the FDIC's role as receiver of IndyMac.

14 **B. The Securitization Trusts**

15           28. Prior to its failure in July 2008, IndyMac operated as a mortgage  
16 securitizer. This means that it originated and otherwise acquired mortgage loans  
17 and then sold the mortgage loans to the Trusts through one of several limited  
18 purpose intermediate entities (e.g., IndyMac ABS, Inc. and IndyMac MBS, Inc.)  
19 that were formed and controlled exclusively by IndyMac for the sole purpose of  
20 acting as the settlor of the Trusts. On rare occasions, IndyMac also sold loans to,  
21 and serviced loans for, Trusts sponsored by third parties. All allegations about the  
22 Trusts in this Complaint include the Trusts sponsored by third parties.

23           29. IndyMac caused the settlor of the Trusts to issue and sell to investors  
24 certain residential mortgage-backed securities that were supported by the cash  
25 flows on the underlying mortgage loans.

26           30. The proceeds from the sale of the mortgage-backed securities (which  
27 included the issuance to IndyMac of certain securities representing residual  
28 interests in the mortgage loans) were then used to pay IndyMac for the mortgage

1 loans that were transferred to the Trusts, and to compensate IndyMac for  
2 performing its obligations to the Trusts. The payments to IndyMac provided  
3 further funds for IndyMac to originate and acquire more mortgage loans that were,  
4 in turn, used to create and sell more securities.

5 31. IndyMac produced and sold into the Trusts an extensive array of non-  
6 traditional mortgage loan products. Central to IndyMac's success in attracting  
7 investors to purchase the mortgage-backed securities sponsored by IndyMac were  
8 IndyMac's representations and promises that a single entity (i.e., IndyMac) would  
9 perform the full range of interrelated functions necessary to protect, preserve and  
10 service these complex Trust assets.

11 32. Because of the large number and variety of non-traditional mortgage  
12 loans sold into the IndyMac Trusts, it was and is important to the Trustee and  
13 investors in the Trusts that the same entity that originated or originally acquired the  
14 loans also be involved in servicing the loans for a number of reasons, including the  
15 assurance that material defects in the mortgage loans could be promptly identified  
16 and resolved by being cured or by having the loans substituted or repurchased by  
17 IndyMac, which possessed information and expertise necessary to perform these  
18 duties efficiently and effectively.

19 33. To promote the sale of its mortgage-backed securities, and to induce  
20 investors to purchase those securities, IndyMac issued a Prospectus about the  
21 benefits of investing in one of its Trusts generally, and a Prospectus Supplement  
22 about each Trust.

23 34. In the typical Prospectus or Prospectus Supplement, IndyMac  
24 promised potential investors that a single entity, "IndyMac Bank," would act as  
25 sponsor, seller and servicer of the Trusts and its underlying mortgage loan assets.

26 35. In the typical Prospectus or Prospectus Supplement, IndyMac also  
27 induced investment in the Trusts by:

28

1 a. promising to deposit into the Trusts a pool of mortgage loans  
2 with the particular attributes and characteristics described therein;

3 b. promising that the mortgage loans that would be sold into the  
4 Trusts had been underwritten in accordance with IndyMac's underwriting  
5 guidelines and making numerous representations regarding IndyMac's underwriting  
6 process;

7 c. promising that the Trusts and the mortgage loans that would be  
8 sold into the Trusts would be serviced by IndyMac, before and after the sale,  
9 employing the same degree of skill and care that IndyMac employs in servicing  
10 comparable mortgage loans for itself or others;

11 d. making numerous representations regarding IndyMac's servicing  
12 process and the manner in which IndyMac would protect, preserve and administer  
13 the Trusts and the underlying mortgage loans;

14 e. acknowledging its ongoing duty to notify other parties-in-interest  
15 to the Trusts, including the Trustee, of breaches of IndyMac's representations or  
16 warranties with respect to the underlying mortgage loans;

17 f. acknowledging its ongoing duty to notify other parties-in-interest  
18 to the Trusts, including the Trustee, of defective documents with respect to the  
19 mortgage loans in the Trusts;

20 g. acknowledging its obligations to repurchase or substitute a  
21 similar mortgage loan for any mortgage loan with document deficiencies or an  
22 uncured breach of any representation, warranty or covenant that materially and  
23 adversely affects the interests of the Trusts' investors or insurers in that mortgage  
24 loan;

25 h. specifying the limited circumstances and manner in which  
26 modifications to the mortgage loans in the Trusts would be permitted;

1 i. confirming that it would perform default management services,  
2 and make certain property preservation advances and advances of principal and  
3 interest, on delinquent loans in the Trusts;

4 j. prominently featuring the credit ratings issued on the mortgage-  
5 backed securities issued by the Trusts; and

6 k. emphasizing the control and minimization of risks to investors  
7 through IndyMac's integrated process of underwriting, originating and servicing  
8 loans and the Trusts.

9 **C. IndyMac's Duties under the Governing Agreements**

10 36. The Trusts were created, the mortgage-backed securities were issued,  
11 and the mortgage loans were sold, transferred and assigned to the Trusts pursuant to  
12 one or more Governing Agreements by and among IndyMac, the settlor entity  
13 controlled by IndyMac, the Trustee, and certain other parties, such as mortgage loan  
14 insurers and bond insurers. The Governing Agreements establish and regulate the  
15 Trusts and the relationships among the parties-in-interest to the Trusts. The  
16 Governing Agreements include Pooling and Servicing Agreements, Sale and  
17 Servicing Agreements, Indentures, Trust Agreements, and related ancillary  
18 agreements.

19 37. Under the Governing Agreements, IndyMac's duties to protect,  
20 preserve, service and administer the Trusts and assets in those Trusts include, but  
21 are not limited to:

22 a. enforcing the borrowers' obligations to make monthly principal  
23 and interest payments on the underlying mortgage loans;

24 b. collecting payments from borrowers on the mortgage loans in the  
25 Trusts, posting and processing payments properly, and pursuing borrowers who fail  
26 to timely make required payments;

27 c. administering and preserving the documents and files necessary  
28 to enforce the borrowers' obligations on underlying mortgage loans;

1           d. notifying other parties to the Governing Agreements when  
2 IndyMac knew of the existence of missing or defective mortgage loan documents;

3           e. notifying other parties to the Governing Agreements of mortgage  
4 loans that did not comply with the representations or warranties IndyMac made  
5 with respect to such mortgage loans;

6           f. curing all breaches of any representation or warranty which  
7 materially and adversely affect the interests of the Trust beneficiaries, including any  
8 breach of representation or warranty for any loan for which coverage was rescinded  
9 or a claim was denied by the mortgage pool insurer;

10           g. repurchasing or substituting a similar mortgage loan for any  
11 mortgage loan as to which an uncured material and adverse breach of a  
12 representation or warranty exists, including mortgage loans for which coverage was  
13 rescinded or a claim denied by the mortgage pool insurer, at the price and in the  
14 manner specified in the Governing Agreements;

15           h. making certain property preservation advances and cash  
16 advances with respect to delinquent payments of principal and interest on the  
17 mortgage loans;

18           i. managing claims and proceedings to enforce the obligations of  
19 borrowers to make timely payments of principal and interest on the mortgage loans,  
20 including foreclosures, evictions, quiet title and bankruptcy filings, and the  
21 administration of properties purchased at foreclosures or otherwise acquired from  
22 the borrowers;

23           j. modifying mortgage loans only when those loans were seriously  
24 delinquent and when each proposed modification would benefit Trust investors by  
25 minimizing losses on the modified loan;

26           k. providing accurate and timely reports to the Trustee regarding  
27 the status of the Trusts and the underlying mortgage loans; and

28

1           l.       indemnifying the Trustee for certain fees, costs and expenses  
2 incurred by the Trustee in administering, protecting and defending the Trusts and  
3 the underlying mortgage loan assets.

4           38.    As compensation for the performance of its duties, IndyMac received  
5 the purchase price of the loans (which included, in some instances, residual  
6 interests in the Trusts) and also received monthly fees and income from the Trusts  
7 based on the aggregate outstanding principal balance of the mortgage loans in each  
8 Trust. IndyMac also retained certain additional fees and income from late payment  
9 charges on the mortgage loans, as well as interest or other proceeds earned on assets  
10 held in collection accounts.

11           39.    The Trustee and the Trust investors had the right to, and did, rely on  
12 IndyMac's representations that a single entity, IndyMac, would sponsor the  
13 transactions, sell mortgage loans into the Trusts, and thereafter service the Trusts  
14 and the underlying mortgage loan assets unless either (a) IndyMac's rights and  
15 obligations were terminated by them for cause or (b) the Trustee (and, in some  
16 cases, other parties-in-interest to the Trusts) consented to IndyMac's transfer of its  
17 rights and obligations.

18           40.    Neither the Trustee nor Trust investors terminated any of IndyMac's  
19 rights and obligations relating to the Trusts or consented to any transfer of such  
20 rights and obligations.

21           41.    The Governing Agreement for each Trust provides that the Trustee  
22 shall not be required to expend, advance or risk its own funds or otherwise incur  
23 financial liability in the performance of any of its duties thereunder or in the  
24 exercise of any of its rights or powers.

25           42.    The Trustee and the Trusts' investors had the right to, and did, rely on  
26 IndyMac's promises to indemnify the Trustee for the fees, costs and expenses  
27 incurred by the Trustee in administering, protecting and defending the Trusts.

1           43. The Governing Agreements represent an integrated set of contractual  
2 undertakings on behalf of IndyMac with respect to the formation and servicing of  
3 the Trusts.

4           44. Each Governing Agreement is a unitary contract that is not divisible.

5           45. IndyMac entered into each of the Governing Agreements as a single  
6 contracting party, making the representations and warranties both with respect to  
7 the due execution and enforceability of the Governing Agreements and with respect  
8 to the underlying mortgage loans.

9           46. The Governing Agreements are executory contracts that involve  
10 obligations that are ongoing, mutual, and interrelated.

11           47. The Governing Agreements:

12               a. are all in writing;

13               b. were all executed by IndyMac and DBNTC, as Trustee, at the  
14 time the associated property interests transferred;

15               c. were executed on behalf of IndyMac by individuals duly  
16 authorized by the IndyMac Board of Directors; and

17               d. have been continuously in existence, since the time of execution,  
18 and constitute official records of IndyMac.

19       **D. IndyMac's Representations and Warranties**

20           48. Under the Governing Agreements, IndyMac made numerous  
21 representations, warranties and covenants regarding the due execution and  
22 enforceability of those agreements and regarding the characteristics of the  
23 underlying mortgage loans. These representations, warranties and covenants  
24 generally include, among other things, that:

25               a. IndyMac is duly organized as a federally insured savings bank, is  
26 validly existing and in good standing, and is qualified to transact any business  
27 contemplated by the Governing Agreements;

28

1           b.     IndyMac has the full corporate power and authority to sell and  
2 service each mortgage loan, to execute, deliver and perform the Governing  
3 Agreements, and to enter into and consummate the transactions contemplated  
4 thereunder;

5           c.     the execution, delivery, and fulfillment of its duties and  
6 obligations under the Governing Agreements by IndyMac would not: (i) result in a  
7 material breach of any term or provision of the charter or by-laws of IndyMac, (ii)  
8 materially conflict with, or result in a material breach, violation or default under  
9 any other material agreement to which IndyMac was bound, or (iii) constitute a  
10 material violation of any statute, order or regulation applicable to IndyMac of any  
11 court, regulatory body, administrative agency or governmental body having  
12 jurisdiction over IndyMac (including without limitation the OTS and the FDIC);

13           d.     IndyMac was not in breach or violation of any material indenture  
14 or other material agreement or instrument, or in violation of any statute, order or  
15 regulation of any court, regulatory body, administrative agency or governmental  
16 body having jurisdiction over it (including without limitation the OTS and the  
17 FDIC) materially impairing IndyMac's ability to perform or meet any of its  
18 obligations under the Governing Agreement; and,

19           e.     IndyMac is an approved servicer of mortgage loans by Federal  
20 National Mortgage Association ("Fannie Mae") or other applicable authorities.

21           49.    Under the Governing Agreements, IndyMac also made numerous  
22 representations, warranties and covenants with respect to the mortgage loans it sold  
23 into the Trusts. Those representations, warranties and covenants generally provide,  
24 among other things, that:

25           a.     a lender's policy of title insurance (or in the case of mortgaged  
26 properties located in areas where title insurance policies are generally not available,  
27 an attorney's certificate of title) or a commitment to issue the policy was effective  
28 on the date of origination of each loan, other than cooperative loans, and that each

1 policy (or certificate of title as applicable) remained in effect on the date of transfer  
2 by IndyMac into the Trust;

3 b. IndyMac had good title to each mortgage loan and the mortgage  
4 loan was subject to no valid offsets, defenses, counterclaims or rights of rescission  
5 subject to certain exceptions;

6 c. each mortgage loan was secured by a valid first lien on, or a first  
7 perfected security interest with respect to, the mortgaged property (subject only to  
8 permissible title insurance exceptions, if applicable, and certain other exceptions  
9 described in the Governing Agreement) and the property was free of material  
10 damage;

11 d. the information provided on one or more schedules to the  
12 Governing Agreements regarding the mortgage loans was true and correct in all  
13 material respects at the time of execution;

14 e. at the time of origination, there were no delinquent tax or  
15 assessment liens against the mortgaged property;

16 f. all regularly scheduled monthly payments due with respect to  
17 each of the mortgage loans, up to and including their transfer into the Trusts, had  
18 been made, and, as of the Trust cut-off date, no mortgage loan had a regularly  
19 scheduled monthly payment that was seriously delinquent during the twelve months  
20 before the cut-off date;

21 g. to the best of IndyMac's knowledge, there was no fraud involved  
22 in the origination of any mortgage loan by the mortgagee or by the mortgagor, any  
23 appraiser or any other party involved in the origination of the mortgage loan;

24 h. each mortgage loan was underwritten and serviced substantially  
25 in accordance with IndyMac's guidelines, subject only to such variances as are  
26 reflected on schedules accompanying the Governing Agreements;

27 i. the mortgage loan files contained the documents specified in the  
28 Governing Agreements and necessary to enforce the mortgage loans; and

1           j.       each loan at the time it was originated and on the date of transfer  
2 into the Trusts complied in all material respects with all applicable local, state and  
3 federal laws.

4           50.     The representations, warranties and covenants referenced in  
5 paragraphs 47 and 48 hereof, together with all of IndyMac's representations,  
6 warranties and covenants under the Governing Agreements, are referred to  
7 collectively hereinafter as the "Representations and Warranties" or the  
8 "Representations or Warranties."

9           51.     In the event of a breach of certain Representations or Warranties with  
10 respect to any mortgage loan, the Governing Agreements impose on IndyMac  
11 and/or its successors the obligation to:

12               a.     notify certain other parties to the Governing Agreements,  
13 including the Trustee;

14               b.     make certain cure payments; and/or

15               c.     repurchase the mortgage loan at a price specified in the  
16 Governing Agreements (typically equal to the unpaid principal balance of the  
17 related mortgage loan(s) plus accrued interest through the date of repurchase).

18           52.     IndyMac's Representations and Warranties are an integral part of the  
19 same Governing Agreements describing and establishing IndyMac's obligations to  
20 service the mortgage loans that it sold into the Trust and the corresponding right of  
21 IndyMac and its successors to receive servicing fees and income.

22           53.     The Governing Agreement for each Trust confers upon the Trustee the  
23 right to demand compliance with, and seek remedies for any breach of, IndyMac's  
24 Representations and Warranties from IndyMac and/or any of its successors.

25           54.     The Governing Agreements require IndyMac and its successors to  
26 indemnify the Trusts and the Trustee for any expenses incurred in enforcing any of  
27 the Representations and Warranties or seeking remedies for any breaches thereof.

28

1 **E. Assignment, Resignation and Other Contractual Matters**

2 55. The Governing Agreements do not permit IndyMac to assign or resign  
3 from its obligations under the Governing Agreements without the consent of the  
4 Trustee.

5 56. Under the Governing Agreements, succession is permitted only by a  
6 person or entity assuming all of IndyMac's business.

7 57. Only the Trustee has the power under Governing Agreements to act as  
8 or hire another qualified successor servicer to service the mortgage loans in the  
9 event of a default by IndyMac under the Governing Agreements or any inability by  
10 IndyMac to perform its continuing obligations under the Governing Agreements.  
11 In that event, the Trustee or its designated replacement successor servicer would  
12 have the right to receive the appropriate servicing fee.

13 **F. The Role Of IndyMac's Successors**

14 58. Pursuant to 12 U.S.C. § 1821(d)(2), by operation of law, the FDIC as  
15 receiver of IndyMac succeeded to all rights, titles, powers, and privileges of  
16 IndyMac, including those arising under the Governing Agreements or otherwise  
17 related to the Trusts.

18 59. Pursuant to 12 U.S.C. § 1821(d)(2), by operation of law, the FDIC as  
19 conservator of IndyMac Federal succeeded to all rights, titles, powers, and  
20 privileges of IndyMac Federal, including those arising under the Governing  
21 Agreements or otherwise related to the Trusts.

22 60. From July 11, 2008 to approximately March 19, 2009, the FDIC as  
23 conservator of IndyMac Federal administered the Trusts and serviced the mortgage  
24 loans in the Trusts on the purported basis that it possessed the "servicing rights" to  
25 those loans under the Governing Agreements.

26 61. In order to exercise such "servicing rights," IndyMac Federal was  
27 obligated to, and by operation of law did, assume all of IndyMac's obligations  
28 under the Governing Agreements.

1           62. On or about March 19, 2009, the FDIC as conservator of IndyMac  
2 Federal purportedly sold certain assets and rights of IndyMac Federal to OneWest  
3 for approximately \$13.9 billion.

4           63. The sale to OneWest included many valuable rights that IndyMac held  
5 under the Governing Agreements or that were otherwise related to the Trusts, but  
6 improperly excluded certain of IndyMac's obligations to the Trusts and the Trustee  
7 under those same Governing Agreements without making alternate arrangements to  
8 assure the performance of those excluded obligations. Specifically, the sale to  
9 OneWest included what the FDIC characterized as the "servicing rights" under the  
10 Governing Agreements, including IndyMac's right to service the mortgage loans in  
11 the Trusts and the corresponding right to receive the servicing fees and income  
12 provided in the Governing Agreements. The sale, however, excluded certain  
13 obligations imposed on IndyMac under the same Governing Agreements, including  
14 on information and belief, "any repurchase obligations for breaches of loan level  
15 representations, any indemnities relating to origination activities or securities laws  
16 or any seller indemnity."

17           64. On information and belief, the sale to OneWest had the effect of  
18 treating the obligations of IndyMac and its successors to the Trusts and the Trustee  
19 differently than the obligations of IndyMac and its successors contained in similar  
20 contracts between IndyMac and certain government-sponsored entities, such as  
21 Fannie Mae, the Government National Mortgage Association (known as "Ginnie  
22 Mae") and the Federal Home Loan Mortgage Corporation (known as "Freddie  
23 Mac"), were treated. Specifically, the FDIC expressly assumed and assigned to  
24 OneWest all of IndyMac's obligations and rights under its loan sale and servicing  
25 contracts with government-sponsored entities, while cherry picking selected rights  
26 and obligations under the Governing Agreements for the Trusts and making no  
27 provision for the performance of IndyMac's other obligations to the Trusts and the  
28 Trustee under the Governing Agreements.

1           65. In attempting to sell, and thereby reap the benefits of, the Governing  
2 Agreements without assuming and assigning (or otherwise performing) the related  
3 obligations, the FDIC acted outside the scope of its statutorily defined authority.

4           66. In the sale to OneWest, the FDIC purported to split unitary contracts  
5 and divide rights and obligations that are not severable.

6           67. The FDIC failed to follow the procedures provided in the Governing  
7 Agreements for transferring servicing rights and obligations.

8           68. The FDIC's effort to sell the benefits of the Governing Agreements  
9 without transferring the corresponding obligations deprived the Trusts and the  
10 Trustee of property without due process of law and took private property of the  
11 Trusts and the Trustee without just compensation.

12           69. The FDIC's actions described herein discriminated against the Trusts  
13 and the Trustee as private parties, while benefiting other similarly situated entities  
14 that are affiliated with the United States government.

15           70. On several occasions, the Trustee has attempted to obtain more detail  
16 from the FDIC about the sale to OneWest, including by making two requests to the  
17 FDIC pursuant to the Freedom of Information Act, 5 U.S.C. § 552, et seq. for  
18 information and documents regarding the sale to OneWest.

19           71. To date, the Trustee has not received all of the information it has  
20 requested, nor has the FDIC provided the Trustee with a complete copy of the  
21 OneWest sale agreement, together with all of the related agreements, exhibits, and  
22 schedules.

23           72. As a result of the FDIC's failure to provide all of the relevant  
24 documents and information, many of the details of the sale to OneWest, while  
25 known to and in control of the FDIC, remain unclear to the Trustee,  
26 notwithstanding that the sale affects significant and valuable rights of the Trusts  
27 and the Trustee.

28

1 **G. Radian and Repudiation**

2 73. The sale to OneWest also purported to exclude rights and obligations  
3 under the Governing Agreements with respect to three Trusts for which Radian  
4 Insurance, Inc. (“Radian”) provides mortgage pool insurance (collectively, the  
5 “Radian Trusts”). Mortgage pool insurance is a guarantee against certain losses on  
6 the individual mortgage loans in the Radian Trusts.

7 74. The Radian Trusts are: (1) IndyMac INDS Home Equity Mortgage  
8 Loan Trust Series 2006-2B; (2) IndyMac INDS Home Equity Mortgage Loan Trust  
9 Series 2006-3; and (3) IndyMac INDS Home Equity Mortgage Loan Trust Series  
10 2007-1.

11 75. Radian’s obligations to the Radian Trusts, the Trustee and other parties  
12 are currently the subject of pending litigation and arbitration proceedings.

13 76. On March 19, 2009, the FDIC as receiver of IndyMac notified the  
14 Trustee that it was formally repudiating certain of the Governing Agreements for  
15 the Radian Trusts pursuant to 12 U.S.C. § 1821(e), claiming that those Governing  
16 Agreements are “burdensome” and that repudiation would “promote the orderly  
17 administration of the institution’s [IndyMac’s] affairs.”

18 77. The FDIC has not notified the Trustee or, on information and belief,  
19 any other party in interest to any Trust, that it has repudiated any of the Governing  
20 Agreements other than those associated with the Radian Trusts.

21 **H. Proof of Claim**

22 78. On October 14, 2008, the Trustee timely filed with the FDIC as  
23 receiver for IndyMac a Proof of Claim on behalf of the Trusts and the Trustee  
24 pursuant to 12 U.S.C. § 1821(d) (together with all exhibits thereto, the “Proof of  
25 Claim”), outlining various claims against the FDIC under or related to the  
26 Governing Agreements.

27 79. The Trustee hereby incorporates by reference as if set forth here in full  
28 the entirety of its Proof of Claim, along with the exhibits thereto and materials

1 referenced therein. Accordingly, a copy of the Proof of Claim without exhibits is  
2 attached as Exhibit 2 hereto. The exhibits to the Proof of Claim are incorporated  
3 herein by reference as if set forth in full, but because they include confidential and  
4 sensitive information, the Trustee would submit the exhibits to the Proof of Claim  
5 under seal if they must be filed.

6 80. On information and belief, other parties with interests in or obligations  
7 to the Trusts filed proofs of claim with the FDIC, including insurers, monoline  
8 credit enhancement providers, underwriters, depositors, loan servicers, and  
9 investors. The claims asserted in these other proofs of claim may be related or  
10 supplemental to the claims asserted by the Trustee and the Trusts in this action.  
11 The Trustee hereby incorporates by reference any such proofs of claims, along with  
12 the exhibits thereto and any materials referenced therein to the extent appropriate  
13 and/or necessary.

14 81. In its Proof of Claim, the Trustee identified the failure of IndyMac and  
15 its successors (including the FDIC in multiple capacities), in contravention of the  
16 Governing Agreements, to provide access to books and records, and to properly  
17 notify the Trustee of the ongoing multiple breaches of Representations and  
18 Warranties that were concealed from the Trustee.

19 82. In its Proof of Claim and otherwise, the Trustee also requested that it  
20 be given reasonable access and time to investigate its claims (the "Requested  
21 Access"), so that, among other things, the Trustee could provide more information  
22 to the FDIC in support of its claims.

23 83. In its Proof of Claim, the Trustee further reserved its rights to amend  
24 or supplement its Proof of Claim and made clear that its Proof of Claim was in no  
25 way intended to waive or release any claim it or the Trusts may have.

26 84. On March 31, 2009, without providing or addressing the Trustee's  
27 Requested Access, the FDIC issued a Notice of Disallowance, rejecting the  
28 Trustee's Proof of Claim. A copy of the Notice of Disallowance is attached as

1 Exhibit 3 hereto. Pursuant to 12 U.S.C. § 1821(d)(5)(A)(iv), the FDIC was  
2 required in the Notice of Disallowance to state “each reason for the disallowance.”  
3 The sole stated basis for the FDIC’s denial was that the claim was not “fixed and  
4 certain as of bank failure on July 11, 2008.”

5 85. Pursuant to 12 U.S.C. § 1821(d)(6)(A)(ii), the disallowance of the  
6 Trustee’s Proof of Claim triggered the right to “file suit on such claim in the district  
7 or territorial court of the United States for the district within which the depository  
8 institution’s principal place of business is located or the United States District Court  
9 for the District of Columbia (and such court shall have jurisdiction to hear such  
10 claim)” within 60 days. This action is therefore timely and appropriately brought in  
11 this Court.

12 V.

13 **BREACHES AND DAMAGES**

14 **A. IndyMac’s Breaches of Its Representations and Warranties**

15 86. IndyMac breached numerous provisions of the Governing Agreements.

16 87. Without limiting the generality of the foregoing, and by way of  
17 example only, IndyMac committed the following breaches of the Representations  
18 and Warranties:

19 a. Numerous mortgage loans IndyMac sold into the Trusts did not  
20 comply with IndyMac’s credit underwriting standards and origination process.  
21 There was “little, if any review of borrower qualifications, including income, assets  
22 and employment,” as well as a failure to obtain proper property appraisals (see  
23 Office of the Inspector General, Department of the Treasury, Audit Report,  
24 “SAFETY AND SOUNDNESS: Material Loss Review of IndyMac Bank, FSB,”  
25 Feb. 26, 2009, at 11-12);

26 b. Many mortgage loans sold into the Trusts did not comply with  
27 the applicable requirements even before they were sold into the Trusts;

1 c. Many mortgage loan origination files did not contain required  
2 documentation;

3 d. The origination of many mortgage loans did not comply with  
4 applicable laws; and

5 e. Many mortgage loans did not comply with the characteristics set  
6 forth in the schedules to the Governing Agreements.

7 88. IndyMac breached the Representations and Warranties as more fully  
8 described herein before it was placed in receivership, and the breaches continued  
9 during the period that the FDIC acted as receiver for IndyMac and as conservator  
10 for IndyMac Federal.

11 89. These breaches were concealed by IndyMac, including by its refusal to  
12 provide the access to its books and records required by the Governing Agreements.

13 90. The FDIC also failed to permit the Requested Access by the Trustee  
14 and thus concealed the continuing breaches.

15 91. IndyMac failed to comply fully with and breached certain of its  
16 contractual obligations in the Governing Agreements to:

17 a. notify the Trustee and other parties-in-interest to the Trusts of  
18 the breaches of the Representations and Warranties;

19 b. make cure payments as required by the Governing Agreements;

20 c. repurchase the mortgage loans that did not conform with or  
21 otherwise breached the Representations and Warranties; and/or

22 d. indemnify the Trusts and the Trustee for the liabilities, expenses  
23 and losses associated with the breaches of the Representations and Warranties.

24 92. The breaches of Representations and Warranties continued through the  
25 receivership period and continue to the present date.

26 93. IndyMac Federal, as successor to IndyMac, also breached numerous  
27 Representations and Warranties in the Governing Agreements during the period in  
28 which the FDIC was managing its affairs.

1           94.    IndyMac’s successors, including the FDIC as receiver of IndyMac, and  
2 as conservator and receiver of IndyMac Federal, also breached and have continued  
3 to breach the foregoing Representations and Warranties, and have failed to comply  
4 fully with their obligations pursuant to the Governing Agreements to:

- 5           a.    notify the Trustee and other parties-in-interest to the Trusts of
- 6 the breaches of Representations and Warranties;
- 7           b.    make cure payments as required by the Governing Agreements;
- 8           c.    repurchase the mortgage loans that do not conform with or
- 9 otherwise breach the Representations and Warranties; and/or
- 10           d.    indemnify the Trusts and the Trustee for the liabilities, expenses
- 11 and losses associated with the breaches of the Representations and Warranties.

12           95.    In addition, despite provisions of the Governing Agreements  
13 permitting the Trustee and certain other parties-in-interest to the Trusts to have  
14 access to IndyMac’s books and records concerning mortgage loans in the Trusts,  
15 IndyMac and its successors, both before and after IndyMac’s failure, have  
16 consistently refused to allow the Trustee and, on information and belief, such other  
17 parties-in-interest to the Trusts, access to those books and records. As a result,  
18 although the Trustee believes that there are other breaches of Representations and  
19 Warranties that occurred before IndyMac’s failure and have continued through the  
20 present, that information has been concealed from the Trustee.

21           96.    Moreover, because IndyMac and its successors have failed to comply  
22 with their obligations to notify the Trustee of breaches of Representations and  
23 Warranties, the Trustee is not aware of all of the breaches that have occurred.

24           97.    On information and belief, the breaches of Representations and  
25 Warranties more fully described herein have damaged the Trusts and the Trustee in  
26 the approximate amount of \$6 billion to \$8 billion or more.

1 **B. Servicing Deficiencies**

2 98. IndyMac failed to comply with its obligations to service the mortgage  
3 loans in the Trusts in accordance with applicable standards, the Representations and  
4 Warranties, and the other provisions of the Governing Agreements.

5 99. IndyMac's successors, including the FDIC as receiver of IndyMac and  
6 as conservator of IndyMac Federal, also have failed to comply with applicable  
7 obligations to service the mortgage loans in the Trusts in accordance with  
8 applicable standards, the Representations and Warranties, and the other provisions  
9 of the Governing Agreements.

10 100. Without limiting the generality of the foregoing, and by way of  
11 example only, IndyMac and its successors have failed to appropriately service the  
12 mortgage loans in the Trusts by:

13 a. failing to notify the Trustee and others, and take appropriate  
14 steps, relating to mortgage loans failing to conform with the Representations and  
15 Warranties;

16 b. failing to adequately staff, or improperly staffing, key functions  
17 involved in collections on mortgage loans, particularly with respect to delinquent  
18 mortgage loans, resulting in collection delays and losses;

19 c. conducting loss mitigation activities, including loan  
20 modifications, that fall below the servicing standard set forth in the Governing  
21 Agreements or otherwise violate the Governing Agreements, including but not  
22 limited to: (i) failing to fully or consistently consider borrower assets, recent credit  
23 activity or prior loan purpose; (ii) imposing substantive and procedural biases  
24 against effective remedial activity and in favor of loan modifications, even when  
25 such modifications were not reasonably expected to minimize investors' losses on  
26 the mortgage loans; (iii) delaying the initiation of foreclosure proceedings; (iv)  
27 failing to properly preserve property; and (v) conducting loss mitigation activities  
28 with inadequate or improper controls over such activities;

1 d. allowing the FDIC's policy objectives to override its obligations  
2 under the Governing Agreements and applicable law;

3 e. knowingly and intentionally deviating from required and  
4 appropriate standards with respect to the individual servicing of numerous  
5 mortgage loans; and

6 f. failing to pursue recoveries and reimburse the Trusts in cases of  
7 first payment default or early payment default.

8 **C. Indemnification for Expenses**

9 101. As a result of the breaches of Representations and Warranties set forth  
10 herein and other breaches by IndyMac and its successors, the Trustee and the Trusts  
11 have incurred, and will continue to incur, significant costs and legal expenses,  
12 including attorneys' fees and costs, and face substantial liability for third-party  
13 claims. These third-party claims include, but are not limited to, claims made in  
14 civil litigation proceedings against the Trustee and/or the Trusts, including but not  
15 limited to the pending litigation and arbitration proceedings relating to the Radian  
16 Trusts and other lawsuits filed against the Trustee and/or the Trusts relating to  
17 IndyMac and its origination and/or servicing of mortgage loans.

18 102. Such third-party claims involve or relate to the acts and omissions of  
19 IndyMac and its successors in connection with the origination and servicing of  
20 mortgage loans in the Trusts.

21 103. The expenses, costs and liabilities (including claims asserted by third  
22 parties against the Trusts and the Trustee) incurred or suffered to date exceed \$77  
23 million, and will increase over time.

24 104. Pursuant to the Governing Agreements, IndyMac and its successors  
25 were and are obligated to indemnify the Trustee and the Trusts for these amounts.

26 105. Such indemnification constitutes core consideration both for the  
27 Trustee's initial and ongoing obligation and agreement to act as Trustee and for the  
28 investors' purchase of securities issued by the Trusts.

1           106. IndyMac failed, and its successors have continued to fail, to comply  
2 fully with their indemnification obligations to the Trustee.

3       **D. Damages From Sale to OneWest**

4           107. Because of the breaches by IndyMac and its successors, the Trustee  
5 and the Trusts are entitled under the Governing Agreements and applicable law to  
6 exercise remedies of setoff and recoupment against any rights which IndyMac or its  
7 successors have to receive payments or reimbursements from the Trustee and/or the  
8 Trusts.

9           108. Under terms of the Governing Agreements, IndyMac and its  
10 successors have the right to recover from Trust assets certain unpaid servicing fees  
11 and certain advances previously made by them for the benefit of the Trusts.

12           109. On information and belief, as more fully set forth above, the sale to  
13 OneWest attempted to transfer to OneWest many of the benefits of the Governing  
14 Agreements, including the rights to recover amounts from the Trusts as described in  
15 the paragraph above, without transferring or otherwise assuring the performance of  
16 all of the related and/or necessary obligations and without expressly transferring the  
17 right of setoff or recoupment that the Trusts and the Trustee would have against  
18 those amounts.

19           110. The failure of IndyMac, the FDIC and/or OneWest as IndyMac's  
20 successor-in-interest to perform these obligations inflicts economic harm on the  
21 Trusts and the Trustee, principally in the form of losses on loans that the Governing  
22 Agreements require IndyMac and/or its successors to repurchase and losses from  
23 liabilities and costs that the Governing Agreements required IndyMac and/or the  
24 FDIC to bear as indemnitors.

25           111. In addition, on information and belief, the FDIC purported to sell and  
26 assign to OneWest all of IndyMac's and the FDIC's rights to recover the amounts  
27 described in paragraph 107 above free and clear of the Trusts' and the Trustee's  
28 rights of setoff and recoupment.

1 112. OneWest therefore may contend that the Trusts and the Trustee do not  
2 have the setoff and recoupment rights that the Trusts and the Trustee would have if  
3 IndyMac or the FDIC still owned all of the assets transferred to OneWest.

4 113. The Trustee notified the FDIC of its rights to setoff and recoupment  
5 both in its Proof of Claim and in communications preceding the closing of the  
6 OneWest sale transaction.

7 114. The Trusts and the Trustee are directly damaged by the FDIC's actions  
8 in the OneWest sale transaction to the extent that the sale transaction deprives them  
9 of the benefits of such setoff and recoupment rights.

10 **E. Damages from Repudiation**

11 115. The Trustee and the Trusts have been damaged as a direct and  
12 proximate result of the repudiation of certain of the Governing Agreements related  
13 to the Radian Trusts.

14 116. The repudiation of certain of the Governing Agreements related to the  
15 Radian Trusts constitutes an anticipatory breach of the related Governing  
16 Agreements in their entirety.

17 **VI.**

18 **CAUSES OF ACTION**

19  
20 **COUNT ONE**

21 **PRE-FAILURE BREACH OF CONTRACT**

22 **(AGAINST FDIC AS RECEIVER OF INDYMAC AND FDIC AS**

23 **CONSERVATOR OF INDYMAC FEDERAL)**

24 117. The Trustee incorporates by reference the previous and succeeding  
25 paragraphs of this Complaint as if they were set forth here in full.

26 118. The conduct alleged above constitutes multiple breaches of contract by  
27 IndyMac, including breaches of the Governing Agreements.

1 119. Without limiting the generality of the foregoing, IndyMac breached  
2 the Governing Agreements by:

- 3 a. selling materially defective mortgage loans into the Trusts that  
4 did not comply with IndyMac's express Representations and Warranties;
- 5 b. failing to repurchase the mortgage loans that did not comply with  
6 IndyMac's Representations and Warranties; and
- 7 c. failing to notify the Trustee of the existence of these breaches of  
8 Representations and Warranties.

9 120. As a direct and proximate cause of IndyMac's breaches of contract, the  
10 Trusts and the Trustee have suffered significant damages.

11 121. The Trustee is fully performing and has not breached its obligations  
12 under the Governing Agreements or excused the performance by IndyMac and its  
13 successors of their obligations thereunder.

14 122. The FDIC as the receiver of IndyMac is the successor in interest to  
15 IndyMac.

16 123. In addition, IndyMac Federal, and the FDIC as conservator of  
17 IndyMac Federal, is the successor in interest to IndyMac.

18 124. As successor in interest to IndyMac in both capacities, the FDIC was  
19 required by law either to assume in their entirety IndyMac's obligations under the  
20 Governing Agreements, if it wished to obtain the benefits of the Governing  
21 Agreements, or to repudiate the Governing Agreements in their entirety.

22 125. Having elected to assume IndyMac's obligations under the Governing  
23 Agreements in order to gain the benefits of the Governing Agreements, the FDIC  
24 was bound by those obligations in their entirety and was required to perform them,  
25 including the obligations to notify the Trustee of breaches and to cure them and/or  
26 repurchase any affected mortgage loans as a condition to transferring IndyMac's  
27 obligations and assets to IndyMac Federal.

28

1 126. The FDIC failed to cure IndyMac's breaches of the Governing  
2 Agreements.

3 127. As receiver of IndyMac, the FDIC is liable for IndyMac's breaches of  
4 contract arising before the failure of IndyMac.

5 128. In addition, the FDIC's breaches of the Governing Agreements, and its  
6 failure to cure IndyMac's breaches, constitute breach of contract and wrongful  
7 conduct in its administration of the IndyMac receivership.

8 129. The FDIC's conduct gives rise to a priority right of payment that is  
9 superior or equivalent to an administrative claim under the preference scheme  
10 outlined in 12 U.S.C. § 1821(d)(11).

11 130. The Trusts and the Trustee are entitled to an award of damages caused  
12 by IndyMac's pre-failure breaches of contract, which are currently estimated at \$6  
13 billion to \$8 billion or more.

14 131. The Trusts and the Trustee are entitled to recover these damages either  
15 in full or as an administrative priority claim in light of the FDIC's failure to cure  
16 IndyMac's pre-failure breaches of contract.

17 WHEREFORE, the Trusts and the Trustee demand judgment in their favor  
18 against the FDIC as receiver of IndyMac, and as conservator of IndyMac Federal to  
19 the extent of any IndyMac assets transferred to IndyMac Federal, in an amount to  
20 be determined, plus pre- and post-judgment interest, costs of suit, attorneys' fees,  
21 and such other relief to which they may be entitled.

22 **COUNT TWO**

23 **POST-FAILURE BREACH OF CONTRACT**

24 **(AGAINST FDIC AS CONSERVATOR OF INDYMAC FEDERAL)**

25 132. The Trustee incorporates by reference the previous and succeeding  
26 paragraphs of this Complaint as if they were set forth here in full.

27 133. The FDIC, as conservator of IndyMac Federal, assumed IndyMac's  
28 obligations under the Governing Agreements as of approximately July 11, 2008,

1 including the obligations to service and administer the Trusts and the mortgage  
2 loans included in the Trusts.

3 134. Upon assuming IndyMac's obligations, the FDIC was required to cure  
4 IndyMac's breaches of the Governing Agreements.

5 135. In addition, the FDIC was required to abide by the Governing  
6 Agreements it assumed. In fact, the FDIC acknowledged its obligation and  
7 represented to the Trustee that it would abide by those agreements by letter dated  
8 September 8, 2008.

9 136. The FDIC failed to cure IndyMac's breaches of the Governing  
10 Agreements.

11 137. The FDIC's failure to cure IndyMac's breaches constitutes wrongful  
12 conduct in its administration of the IndyMac Federal conservatorship that gives rise  
13 to a priority right of payment that is superior or equivalent to an administrative  
14 claim under the preference scheme outlined in 12 U.S.C. § 1821(d)(11).

15 138. In addition, the FDIC as conservator of IndyMac Federal committed  
16 several breaches of the Governing Agreements it had assumed.

17 139. Without limiting the generality of the foregoing, the FDIC breached  
18 and continues to breach the Representations and Warranties in the Governing  
19 Agreements and also failed to:

20 a. repurchase loans that the FDIC knew were subject to material  
21 breaches of Representations and Warranties;

22 b. notify the other parties to the Governing Agreements of the  
23 existence of material breaches of the Representations and Warranties;

24 c. service the loans in accordance with and pursuant to the  
25 Governing Agreements as more fully set forth above; and

26 d. provide for the due performance of all of IndyMac's  
27 indemnification obligations to the Trusts and the Trustee under the Governing  
28 Agreements.

1           140. The FDIC's conduct of the conservatorship of IndyMac Federal,  
2 specifically including its breaches of the Governing Agreements, exceeds the  
3 FDIC's lawful authority as conservator and renders the FDIC liable for full  
4 repayment of any damages arising as a result of the breaches.

5           141. At a minimum, the FDIC's post-receivership breaches of the  
6 Governing Agreements give rise to an administrative priority right of payment  
7 under 12 U.S.C. § 1821(d)(20).

8           142. As a direct and proximate cause of the FDIC's wrongful conduct and  
9 breaches of contract, the Trusts and the Trustee have suffered significant damages.

10           143. The FDIC is liable for breaching the Governing Agreements during its  
11 conservatorship of IndyMac Federal.

12           144. The Trusts and the Trustee are entitled to an award of damages caused  
13 by the FDIC's failure to cure IndyMac's pre-failure breaches of contract and the  
14 FDIC's post-failure breaches of contract, which are currently estimated at \$6 billion  
15 to \$8 billion or more.

16           145. The Trusts and the Trustee are entitled to recover these damages either  
17 in full or as an administrative priority claim in light of the FDIC's willful conduct  
18 in failing to cure the pre-failure breaches of contract by IndyMac and in light of the  
19 FDIC's further breaches of the Governing Agreements during the conservatorship  
20 period.

21           WHEREFORE, the Trusts and the Trustee demand judgment in their favor  
22 against the FDIC as conservator of IndyMac Federal for damages in an amount to  
23 be determined, plus pre- and post-judgment interest, costs of suit, attorneys' fees,  
24 and such other relief as they may be entitled to receive.

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**COUNT THREE**  
**BREACH OF CONTRACT FOR SALE TO ONEWEST**  
**(AGAINST FDIC AS RECEIVER OF INDYMAC, FDIC AS**  
**CONSERVATOR OF INDYMAC FEDERAL, AND FDIC IN ITS**  
**CORPORATE CAPACITY)**

146. The Trustee incorporates by reference the previous and succeeding paragraphs of this Complaint as if they were set forth here in full.

147. The Governing Agreements are fully integrated “Qualified Financial Contracts” under 12 U.S.C. § 1821(e)(8)(E) and, as such, they must be transferred or retained in whole. 12 U.S.C. § 1821(e)(9)(i), (ii).

148. IndyMac, as servicer, could not assign its rights and obligations under the Governing Agreements without the prior written consent of the Trustee, and, if IndyMac was no longer the servicer for any reason, the Governing Agreements provided that the Trustee would become the successor servicer with the right to appoint a replacement successor servicer.

149. The FDIC, in its capacities as receiver of IndyMac, conservator of IndyMac Federal, and in its corporate capacity, breached the Governing Agreements by purporting to transfer to OneWest all of IndyMac’s servicing rights and obligations under the Governing Agreements without transferring IndyMac’s liabilities and obligations to honor all of the Representations and Warranties and other key provisions of the Governing Agreements.

150. The FDIC, in each of its capacities, violated 12 U.S.C. § 1821(e)(9) when it purported to transfer only a portion of the Governing Agreements to OneWest.

151. On information and belief, the FDIC in its corporate capacity benefited from the sale of IndyMac’s servicing rights to OneWest because it used the profits to pay IndyMac’s insured depositors and to protect the deposit insurance fund. The evidence of the precise distribution of such assets, however, is in the hands of the

1 FDIC and has been concealed from the Trusts, the Trustee, and the investors in the  
2 Trusts.

3 152. As a direct and proximate cause of the breaches of contract and  
4 violation of 12 U.S.C. § 1821(e)(9), the Trusts and the Trustee have suffered  
5 significant damages.

6 153. The breaches of the Governing Agreements exceed the lawful  
7 authority of the FDIC as receiver of IndyMac, conservator of IndyMac Federal, and  
8 in its corporate capacity, and render the FDIC, in each capacity, jointly and  
9 severally, liable for full repayment of any damages arising therefrom.

10 154. At a minimum, the aforesaid conduct by the FDIC in all capacities  
11 gives rise to a priority right of payment that is superior or equivalent to an  
12 administrative claim under the preference scheme outlined in 12 U.S.C. §  
13 1821(d)(11).

14 155. In addition, the purported transfer of rights to OneWest has deprived  
15 the IndyMac Federal conservatorship or receivership estate of substantial assets to  
16 the disadvantage of the Trusts and the Trustee.

17 WHEREFORE, the Trusts and the Trustee demand judgment in their favor  
18 against FDIC in its capacities as receiver of IndyMac, as conservator of IndyMac  
19 Federal, and in its corporate capacity for damages in an amount to be determined,  
20 plus pre- and post-judgment interest, costs of suit, attorneys' fees, and such other  
21 relief as they may be entitled to receive.

22 **COUNT FOUR**

23 **REPUDIATION RELATED TO RADIAN TRUSTS**

24 **(AGAINST FDIC AS RECEIVER OF INDYMAC)**

25 156. The Trustee incorporates by reference the previous and succeeding  
26 paragraphs of this Complaint as if they were set forth here in full.

27 157. Pursuant to 12 U.S.C. § 1821(e), the FDIC as receiver has the power to  
28 disaffirm or repudiate a contract entered into by the failed institution that it deems

1 burdensome where the repudiation “will promote the orderly administration of the  
2 institution’s affairs.” 12 U.S.C. § 1821(e)(1).

3 158. As more fully set forth above, the FDIC as receiver of IndyMac  
4 repudiated certain Governing Agreements pertaining to the three Radian Trusts.

5 159. Pursuant to 12 U.S.C. § 1821(e)(3), the FDIC’s repudiation of these  
6 certain Governing Agreements pertaining to the three Radian Trusts gives rise to a  
7 claim by the Radian Trusts and the Trustee for resulting damages.

8 160. As a direct and proximate cause of the repudiation by the FDIC, the  
9 Radian Trusts and the Trustee have suffered significant damages and will continue  
10 to suffer such damages.

11 WHEREFORE, the Radian Trusts and the Trustee demand judgment in their  
12 favor against FDIC as receiver of IndyMac for damages in an amount to be  
13 determined, plus pre- and post-judgment interest, costs of suit, attorneys’ fees, and  
14 such other relief as they may be entitled to receive.

15 **COUNT FIVE**

16 **BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**  
17 **(AGAINST FDIC AS RECEIVER OF INDYMAC AND FDIC AS**  
18 **CONSERVATOR OF INDYMAC FEDERAL)**

19 161. The Trustee incorporates by reference the previous and succeeding  
20 paragraphs of this Complaint as if they were set forth here in full.

21 162. Applicable law implies a duty of good faith and fair dealing in the  
22 contracts at issue in this case, including the Governing Agreements.

23 163. A party breaches its duty of good faith and fair dealing when it  
24 deprives another party to the contract of the essential or material benefits of the  
25 contract.

26 164. The FDIC as receiver of IndyMac and as conservator of IndyMac  
27 Federal have such a duty of good faith and fair dealing to the Trustee and to the  
28 Trusts.

1 165. The conduct of the FDIC as described herein breached that duty, by  
2 among other things:

3 a. purporting to transfer to OneWest the rights and benefits of the  
4 Governing Agreements, while not transferring the associated obligations;

5 b. structuring transactions so as to deprive the Trustee and the  
6 investors in the Trusts of the essential consideration provided to them under the  
7 Governing Agreements; and

8 c. attempting to deprive the Trustee and the Trusts of setoff or  
9 recoupment rights that they have against servicing fees or advance reimbursement  
10 under the Governing Agreements, which OneWest and/or the FDIC may now  
11 contend not to exist.

12 WHEREFORE, the Trusts and the Trustee seek judgment in their favor and  
13 against the FDIC as receiver of IndyMac and as conservator of IndyMac Federal for  
14 damages in an amount to be determined, plus pre- and post-judgment interest, costs  
15 of suit, attorneys' fees, and such other relief as they may be entitled to receive.

16 **COUNT SIX**  
17 **BREACH OF FIDUCIARY DUTY**  
18 **(AGAINST FDIC AS RECEIVER OF INDYMAC AND AS CONSERVATOR**  
19 **OF INDYMAC FEDERAL)**

20 166. The Trustee incorporates by reference the previous and succeeding  
21 paragraphs of this Complaint as if they were set forth here in full.

22 167. The FDIC as the receiver of IndyMac and as conservator and receiver  
23 of IndyMac Federal has a fiduciary obligation to manage the assets of the  
24 receivership in a manner that "maximizes the net present value return from the sale  
25 or disposition" and "minimizes the amount of any loss realized." 12 U.S.C. §§  
26 1821(d)(3) and 1821(d)(13).

27 168. As a receiver and a fiduciary, the FDIC must act for the benefit of all  
28 parties who may establish rights during the administration of the receivership.

1           169. As receiver, the FDIC further has a fiduciary obligation to claimants to  
2 act in good faith, to act in accordance with the laws that establish its authority, to  
3 preserve the property in its possession, and to act in a manner that maximizes  
4 potential recovery by those claimants and to allocate the proceeds of such assets  
5 impartially and in accordance with rights established by claimants, and statutory  
6 priorities.

7           170. The FDIC has failed to comply with its fiduciary duties as receiver,  
8 including but not limited to, its duties with respect to the management and  
9 disposition of IndyMac and IndyMac Federal assets, and its treatment of the Trustee  
10 and the investors in the Trusts. The FDIC further breached its fiduciary duties as  
11 receiver by furthering its interests in its other capacities, including in its corporate  
12 capacity and as the insurer of bank deposits, at the expense of the Trusts, the  
13 Trustee, and the receivership estate.

14           171. The conduct by the FDIC described herein in its administration of the  
15 IndyMac and IndyMac Federal receiverships gives rise to the personal and  
16 individual liability of the receiver (as opposed to just the assets of the receivership),  
17 and a priority right of payment that is superior or equivalent to an administrative  
18 claim under the preference scheme outlined in 12 U.S.C. § 1821(d)(11).

19           172. As conservator of IndyMac Federal, the FDIC had an obligation either  
20 to honor in their entirety the Governing Agreements to which IndyMac Federal  
21 succeeded, and to lawfully and properly assign the rights and obligations  
22 transferred from IndyMac, or to repudiate these agreements in their entirety. The  
23 FDIC breached this duty.

24           173. The Trusts and the Trustee have suffered damages as a result of the  
25 FDIC's breaches of fiduciary duty.

26           174. The Trusts and the Trustee are entitled to recovery of these damages  
27 either in full from the funds of the FDIC or as an administrative priority claim in  
28 light of the FDIC's wrongful conduct in failing to properly manage the assets of the

1 IndyMac receivership and transfer the assets of the IndyMac Federal  
2 conservatorship.

3 WHEREFORE, the Trusts and the Trustee demand judgment in their favor  
4 against the FDIC as receiver of IndyMac and as conservator of IndyMac Federal,  
5 jointly and severally, for damages in an amount to be determined, plus pre- and  
6 post-judgment interest, costs of suit, attorneys' fees, and such other relief as they  
7 may be entitled to receive.

8 **COUNT SEVEN**

9 **UNCONSTITUTIONAL TAKINGS FOR SALE TO ONEWEST AND**

10 **SPLITTING OBLIGATIONS**

11 **(AGAINST FDIC IN ALL CAPACITIES)**

12 175. The Trustee incorporates by reference the previous and succeeding  
13 paragraphs of this Complaint as if they were set forth here in full.

14 176. The Fifth Amendment to the Constitution prohibits the taking of  
15 property for public use without just compensation.

16 177. The FDIC's actions described herein violate the Fifth Amendment of  
17 the Constitution.

18 178. The contractual rights of the Trusts and the Trustee under the  
19 Governing Agreements constitute property rights.

20 179. The FDIC exercised government authority under the Financial  
21 Institutions Reform, Recovery Enforcement Act ("FIRREA"), 12 U.S.C. § 1821, to  
22 sell certain rights under the Governing Agreements to OneWest.

23 180. By selling rights under the Governing Agreements without also  
24 transferring the associated obligations, the FDIC has: (a) prohibited beneficial uses  
25 and taken, destroyed and deprived the Trustee and the Trusts of economically  
26 viable use of fixed and certain rights under the Governing Agreements; and (b)  
27 frustrated, taken and deprived the Trustee and the Trusts of reasonable investment-  
28 backed expectations of their property.

1 181. The FDIC's actions caused the Trustee and the Trusts to be unable to  
2 profit or obtain a reasonable return on their investments.

3 182. These actions further harmed the economic interest of the Trustee and  
4 the Trusts to benefit the economic interest of the United States Government. The  
5 Trustee and the Trusts should not be forced to bear these burdens for the benefit of  
6 others.

7 183. By these actions, the FDIC has taken the property of the Trusts and the  
8 Trustee without just compensation in violation of the Fifth Amendment to the  
9 Constitution.

10 184. The Trusts and the Trustee are entitled to an award of just  
11 compensation for the taking of their property rights pursuant to FIRREA.

12 185. Such wrongful conduct by the FDIC in its administration of the  
13 IndyMac receivership gives rise to a priority right of payment that is superior or  
14 equivalent to an administrative claim under the preference scheme outlined in 12  
15 U.S.C. § 1821(d)(11).

16 186. The Trusts and the Trustee are therefore entitled to recovery of  
17 damages either in full or as an administrative priority claim in light of the FDIC's  
18 wrongful conduct.

19 WHEREFORE, the Trusts and the Trustee demand judgment in their favor  
20 against the FDIC in all capacities in an amount to be determined representing just  
21 compensation, as well as pre- and post-judgment interest, costs of suit, attorneys'  
22 fees, and such other relief as they may be entitled to receive.

23 **COUNT EIGHT**

24 **UNCONSTITUTIONAL TAKINGS FOR RIGHT TO APPOINT**

25 **SUCCESSOR SERVICER**

26 **(AGAINST FDIC IN ALL CAPACITIES)**

27 187. The Trustee incorporates by reference the previous and succeeding  
28 paragraphs of this Complaint as if they were set forth here in full.

1 188. The Trustee's and the Trusts' contractual rights under the Governing  
2 Agreements constitute property rights.

3 189. The FDIC exercised its authority under 12 U.S.C. § 1821, to sell  
4 certain rights under the Governing Agreements to OneWest.

5 190. Pursuant to the Governing Agreements, the Trustee is the party who  
6 has the right to replace IndyMac as a servicer. This is a valuable right that would  
7 ordinarily bring substantial revenue to the Trustee and the Trusts.

8 191. By purporting to sell the "servicing rights" under the Governing  
9 Agreements without allowing the Trustee to replace and/or appoint the successor  
10 servicer, the FDIC has: (a) prohibited beneficial uses and taken, destroyed and  
11 deprived the Trustee and the Trusts of economically viable uses of its rights under  
12 the Governing Agreements; and (b) frustrated, taken and deprived the Trustee and  
13 the Trusts of reasonable investment-backed expectations of their property.

14 192. The FDIC's actions caused the Trustee and the Trusts to be unable to  
15 profit or obtain a reasonable return on their investments.

16 193. The FDIC harmed the economic interests of the Trustee and the Trusts  
17 to benefit the United States government and the depositors and other creditors of  
18 IndyMac. The Trustee and the Trusts should not be forced to bear these burdens for  
19 the benefit of others.

20 194. By these actions, the FDIC has taken the property of the Trusts and the  
21 Trustee without just compensation in violation of the Fifth Amendment to the  
22 Constitution.

23 195. The Trusts and the Trustee are entitled to an award of just  
24 compensation for the taking of their property rights under the Governing  
25 Agreements pursuant to FIRREA.

26 196. Such wrongful conduct by the FDIC in its administration of the  
27 IndyMac receivership gives rise to a priority right of payment that is superior or  
28

1 equivalent to an administrative claim under the preference scheme outlined in 12  
2 U.S.C. § 1821(d)(11).

3 197. The Trusts and the Trustee are therefore entitled to recovery of  
4 damages either in full or as an administrative priority claim in light of the FDIC's  
5 wrongful conduct.

6 WHEREFORE, the Trusts and the Trustee demand judgment in their favor  
7 against the FDIC in all capacities in an amount to be determined representing just  
8 compensation, as well as pre- and post-judgment interest, costs of suit, attorneys'  
9 fees, and such other relief as they may be entitled to receive.

10 **COUNT NINE**  
11 **DUE PROCESS VIOLATION FOR SALE TO ONEWEST AND SPLITTING**  
12 **OBLIGATIONS**  
13 **(AGAINST FDIC IN ALL CAPACITIES)**

14 198. The Trustee incorporates by reference the previous and succeeding  
15 paragraphs of this Complaint as if they were set forth here in full.

16 199. The Fifth Amendment to the Constitution prohibits the taking of  
17 property without due process of law.

18 200. As more fully set forth above, the FDIC's conduct in all capacities  
19 described herein constitutes a taking of property.

20 201. The FDIC in all capacities failed to provide the Trustee or the Trusts  
21 with due process of law in connection with the takings described herein.

22 WHEREFORE, the Trusts and the Trustee demands judgment in their favor  
23 against the FDIC in all capacities in an amount to be determined representing just  
24 compensation, as well as pre- and post-judgment interest, costs of suit, attorneys'  
25 fees, and such other relief as they may be entitled to receive.

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**COUNT TEN**  
**DUE PROCESS VIOLATIONS FOR RIGHT TO APPOINT SUCCESSOR**  
**SERVICER**  
**(AGAINST FDIC IN ALL CAPACITIES)**

202. The Trustee incorporates by reference the previous and succeeding paragraphs of this Complaint as if they were set forth here in full.

203. The Fifth Amendment to the Constitution prohibits the taking of property without due process of law.

204. As more fully set forth above, the conduct described herein constitutes a taking of property.

205. The FDIC failed to provide the Trustee or the Trusts with due process of law in connection with the takings described herein.

WHEREFORE, the Trusts and the Trustee demand judgment in their favor against the FDIC in all capacities in an amount to be determined representing just compensation, as well as pre- and post-judgment interest, costs of suit, attorneys' fees, and such other relief as they may be entitled to receive.

**COUNT ELEVEN**  
**CONSTRUCTIVE TRUST**  
**(AGAINST THE FDIC IN ALL CAPACITIES)**

206. The Trustee incorporates by reference the previous and succeeding paragraphs of this Complaint as if they were set forth here in full.

207. As more fully set forth above, the sale to OneWest purported to include assets that rightfully belong to the Trusts or the Trustee, including setoff and recoupment rights, and the rights to replace the servicer.

208. In addition, on information and belief, the FDIC made the sale to OneWest in a manner that purported to eliminate the setoff and recoupment rights of the Trusts of the Trustee.

1           209. The Trusts and the Trustee have a superior right to some of the assets  
2 that the FDIC purported to sell to OneWest.

3           210. The Court should therefore impose a constructive trust on the proceeds  
4 from the OneWest sale.

5           211. For all the foregoing reasons, the Trustee and the Trusts respectfully  
6 request that this Court impose a constructive trust on the proceeds of the sale of  
7 valuable rights to OneWest.

8           WHEREFORE, the Trusts and the Trustee request that judgment be entered  
9 in their favor and against the FDIC in each of its capacities imposing a constructive  
10 trust on the proceeds of the sale to OneWest.

11 Dated: May 29, 2009

MORGAN, LEWIS & BOCKIUS LLP  
JAMI WINTZ MCKEON  
DAVID L. SCHRADER

14  
15 By: 

Attorneys for Plaintiff  
Deutsche Bank National Trust  
Company, as Trustee for certain  
residential mortgage-backed  
securitization trusts sponsored by  
IndyMac Bank, F.S.B.

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**JURY TRIAL DEMAND**

Plaintiff DBNTC hereby demands a jury trial to the fullest extent allowed by the Constitution or other applicable law.

Dated: May 29, 2009

MORGAN, LEWIS & BOCKIUS LLP  
JAMI WINTZ MCKEON  
DAVID L. SCHRADER

By: 

Attorneys for Plaintiff  
Deutsche Bank National Trust  
Company, as Trustee for certain  
residential mortgage-backed  
securitization trusts sponsored by  
IndyMac Bank, F.S.B.

**EXHIBIT 1**

1. IndyMac Residential Asset Securitization Trust Series 2002-A12
2. IndyMac Residential Asset Securitization Trust Series 2002-A13
3. IndyMac Residential Asset Securitization Trust Series 2002-A14J
4. IndyMac Residential Asset Securitization Trust Series 2002-A15
5. IndyMac Residential Asset Securitization Trust Series 2002-A16
6. IndyMac Residential Asset Securitization Trust Series 2003-A1
7. IndyMac Residential Asset Securitization Trust Series 2003-A2
8. IndyMac Residential Asset Securitization Trust Series 2003-A4
9. IndyMac Residential Asset Securitization Trust Series 2003-A5
10. IndyMac Residential Asset Securitization Trust Series 2003-A6
11. IndyMac Residential Asset Securitization Trust Series 2003-A7
12. IndyMac Residential Asset Securitization Trust Series 2003-A8
13. IndyMac Residential Asset Securitization Trust Series 2003-A9
14. IndyMac Residential Asset Securitization Trust Series 2003-A10
15. IndyMac Residential Asset Securitization Trust Series 2003-A11
16. IndyMac Residential Asset Securitization Trust Series 2003-A12
17. IndyMac Residential Asset Securitization Trust Series 2003-A13
18. IndyMac Residential Asset Securitization Trust Series 2003-A14
19. IndyMac Residential Asset Securitization Trust Series 2003-A15
20. IndyMac Residential Asset Securitization Trust Series 2004-A1
21. IndyMac Residential Asset Securitization Trust Series 2004-A2
22. IndyMac Residential Asset Securitization Trust Series 2004-A3
23. IndyMac Residential Asset Securitization Trust Series 2004-A4
24. IndyMac Residential Asset Securitization Trust Series 2004-A5
25. IndyMac Residential Asset Securitization Trust Series 2004-A6
26. IndyMac Residential Asset Securitization Trust Series 2004-A7
27. IndyMac Residential Asset Securitization Trust Series 2004-A8
28. IndyMac Residential Asset Securitization Trust Series 2004-A9
29. IndyMac Residential Asset Securitization Trust Series 2004-A10
30. IndyMac INDX Mortgage Loan Trust Series 2004-AR1

31. IndyMac INDX Mortgage Loan Trust Series 2004-AR2
32. IndyMac INDX Mortgage Loan Trust Series 2004-AR3
33. IndyMac INDX Mortgage Loan Trust Series 2004-AR4
34. IndyMac INDX Mortgage Loan Trust Series 2004-AR5
35. IndyMac INDX Mortgage Loan Trust Series 2004-AR6
36. IndyMac INDX Mortgage Loan Trust Series 2004-AR7
37. IndyMac INDX Mortgage Loan Trust Series 2004-AR8
38. IndyMac INDX Mortgage Loan Trust Series 2004-AR9
39. IndyMac INDX Mortgage Loan Trust Series 2004-AR10
40. IndyMac INDX Mortgage Loan Trust Series 2004-AR11
41. IndyMac INDX Mortgage Loan Trust Series 2004-AR12
42. IndyMac INDX Mortgage Loan Trust Series 2004-AR13
43. IndyMac INDX Mortgage Loan Trust Series 2004-AR14
44. IndyMac INDX Mortgage Loan Trust Series 2004-AR15
45. IndyMac Residential Asset Securitization Trust Series 2004-IP1
46. IndyMac Residential Asset Securitization Trust Series 2004-IP2
47. IndyMac Residential Asset Securitization Trust Series 2005-A1
48. IndyMac Residential Asset Securitization Trust Series 2005-A2
49. IndyMac Residential Asset Securitization Trust Series 2005-A3
50. IndyMac Residential Asset Securitization Trust Series 2005-A4
51. IndyMac Residential Asset Securitization Trust Series 2005-A5
52. IndyMac Residential Asset Securitization Trust Series 2005-A6CB
53. IndyMac Residential Asset Securitization Trust Series 2005-A7
54. IndyMac Residential Asset Securitization Trust Series 2005-A8CB
55. IndyMac Residential Asset Securitization Trust Series 2005-A9
56. IndyMac Residential Asset Securitization Trust Series 2005-A10
57. IndyMac Residential Asset Securitization Trust Series 2005-A11CB
58. IndyMac Residential Asset Securitization Trust Series 2005-A12
59. IndyMac Residential Asset Securitization Trust Series 2005-A13
60. IndyMac Residential Asset Securitization Trust Series 2005-A14
61. IndyMac Residential Asset Securitization Trust Series 2005-A15

62. IndyMac Residential Asset Securitization Trust Series 2005-A16
63. IndyMac INDX Mortgage Loan Trust Series 2005-AR1
64. IndyMac INDX Mortgage Loan Trust Series 2005-AR2
65. IndyMac INDX Mortgage Loan Trust Series 2005-AR3
66. IndyMac INDX Mortgage Loan Trust Series 2005-AR4
67. IndyMac INDX Mortgage Loan Trust Series 2005-AR5
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73. IndyMac INDX Mortgage Loan Trust Series 2005-AR11
74. IndyMac INDX Mortgage Loan Trust Series 2005-AR12
75. IndyMac INDX Mortgage Loan Trust Series 2005-AR13
76. IndyMac INDX Mortgage Loan Trust Series 2005-AR14
77. IndyMac INDX Mortgage Loan Trust Series 2005-AR15
78. IndyMac INDX Mortgage Loan Trust Series 2005-AR16IP
79. IndyMac INDX Mortgage Loan Trust Series 2005-AR17
80. IndyMac INDX Mortgage Loan Trust Series 2005-AR18
81. IndyMac INDX Mortgage Loan Trust Series 2005-AR19
82. IndyMac INDX Mortgage Loan Trust Series 2005-AR21
83. IndyMac INDX Mortgage Loan Trust Series 2005-AR23
84. IndyMac INDA Mortgage Loan Trust Series 2005-AR1
85. IndyMac INDX Mortgage Loan Trust Series 2005-AR25
86. IndyMac INDX Mortgage Loan Trust Series 2005-AR27
87. IndyMac INDA Mortgage Loan Trust Series 2005-AR2
88. IndyMac INDX Mortgage Loan Trust Series 2005-AR29
89. IndyMac INDX Mortgage Loan Trust Series 2005-AR31
90. IndyMac INDX Mortgage Loan Trust Series 2005-AR33
91. IndyMac INDX Mortgage Loan Trust Series 2005-AR35
92. IndyMac INDB Mortgage Loan Trust Series 2005-1

**EXHIBIT 1**

93. IndyMac Residential Asset Securitization Trust Series 2006-A1
94. IndyMac Residential Asset Securitization Trust Series 2006-A2
95. IndyMac Residential Asset Securitization Trust Series 2006-A3CB
96. IndyMac Residential Asset Securitization Trust Series 2006-A5CB
97. IndyMac Residential Asset Securitization Trust Series 2006-A6
98. IndyMac Residential Asset Securitization Trust Series 2006-A7CB
99. IndyMac Residential Asset Securitization Trust Series 2006-A8
100. IndyMac Residential Asset Securitization Trust Series 2006-A9CB
101. IndyMac INDS Home Equity Mortgage Loan Trust Series 2006-A
102. IndyMac Residential Asset Securitization Trust Series 2006-A10
103. IndyMac Residential Asset Securitization Trust Series 2006-A11
104. IndyMac Residential Asset Securitization Trust Series 2006-A12
105. IndyMac Residential Asset Securitization Trust Series 2006-A13
106. IndyMac Residential Asset Securitization Trust Series 2006-A14CB
107. IndyMac Residential Asset Securitization Trust Series 2006-A15
108. IndyMac Residential Asset Securitization Trust Series 2006-A16
109. IndyMac INDX Mortgage Loan Trust Series 2006-AR2
110. IndyMac INDX Mortgage Loan Trust Series 2006-AR3
111. IndyMac INDX Mortgage Loan Trust Series 2006-AR4
112. IndyMac INDX Mortgage Loan Trust Series 2006-AR5
113. IndyMac INDX Mortgage Loan Trust Series 2006-AR6
114. IndyMac INDX Mortgage Loan Trust Series 2006-AR7
115. IndyMac INDX Mortgage Loan Trust Series 2006-AR8
116. IndyMac INDX Mortgage Loan Trust Series 2006-AR9
117. IndyMac INDX Mortgage Loan Trust Series 2006-AR11
118. IndyMac INDX Mortgage Loan Trust Series 2006-AR12
119. IndyMac INDX Mortgage Loan Trust Series 2006-AR13
120. IndyMac INDX Mortgage Loan Trust Series 2006-AR14
121. IndyMac INDX Mortgage Loan Trust Series 2006-AR15
122. IndyMac INDX Mortgage Loan Trust Series 2006-AR19
123. IndyMac INDX Mortgage Loan Trust Series 2006-AR21

**EXHIBIT 1**

124. IndyMac INDX Mortgage Loan Trust Series 2006-AR23
125. IndyMac INDX Mortgage Loan Trust Series 2006-AR25
126. IndyMac INDX Mortgage Loan Trust Series 2006-AR27
127. IndyMac INDX Mortgage Loan Trust Series 2006-AR29
128. IndyMac INDX Mortgage Loan Trust Series 2006-AR31
129. IndyMac INDX Mortgage Loan Trust Series 2006-AR33
130. IndyMac INDX Mortgage Loan Trust Series 2006-AR35
131. IndyMac INDB Mortgage Loan Trust Series 2006-1
132. IndyMac INDA Mortgage Loan Trust Series 2006-AR1
133. IndyMac INDA Mortgage Loan Trust Series 2006-AR2
134. IndyMac INDA Mortgage Loan Trust Series 2006-AR3
135. IndyMac INDX Mortgage Loan Trust Series 2006-FLX1
136. IndyMac INDS Home Equity Mortgage Loan Trust Series 2006-1
137. IndyMac INDS Home Equity Mortgage Loan Trust Series 2006-2B
138. IndyMac INDS Home Equity Mortgage Loan Trust Series 2006-3
139. IndyMac Home Equity Loan Trust Series 2006-H2
140. IndyMac Home Equity Loan Trust Series 2006-H3
141. IndyMac Residential Mortgage-Backed Trust Series 2006-L2
142. IndyMac Residential Mortgage-Backed Trust Series 2006-L3
143. IndyMac Residential Asset Securitization Trust Series 2006-A4IP
144. IndyMac INABS Trust Series 2006-C
145. IndyMac INABS Trust Series 2006-D
146. IndyMac INDX Mortgage Loan Trust Series 2006-AR37
147. IndyMac INDX Mortgage Loan Trust Series 2006-AR39
148. IndyMac INDX Mortgage Loan Trust Series 2006-AR41
149. IndyMac Residential Asset Securitization Trust Series 2007-A1
150. IndyMac Residential Asset Securitization Trust Series 2007-A2
151. IndyMac Residential Asset Securitization Trust Series 2007-A3
152. IndyMac Residential Asset Securitization Trust Series 2007-A5
153. IndyMac Residential Asset Securitization Trust Series 2007-A6
154. IndyMac Residential Asset Securitization Trust Series 2007-A7

155. IndyMac Residential Asset Securitization Trust Series 2007-A8
156. IndyMac Residential Asset Securitization Trust Series 2007-A9
157. IndyMac INDX Mortgage Loan Trust Series 2007-AR1
158. IndyMac INDX Mortgage Loan Trust Series 2007-AR5
159. IndyMac INDX Mortgage Loan Trust Series 2007-AR7
160. IndyMac INDX Mortgage Loan Trust Series 2007-AR9
161. IndyMac INDX Mortgage Loan Trust Series 2007-AR11
162. IndyMac INDX Mortgage Loan Trust Series 2007-AR13
163. IndyMac INDX Mortgage Loan Trust Series 2007-AR15
164. IndyMac INDX Mortgage Loan Trust Series 2007-AR17
165. IndyMac INDX Mortgage Loan Trust Series 2007-AR19
166. IndyMac INDX Mortgage Loan Trust Series 2007-AR21IP
167. IndyMac IMSC Mortgage Loan Trust Series 2007-AR1
168. IndyMac INDA Mortgage Loan Trust Series 2007-AR1
169. IndyMac INDA Mortgage Loan Trust Series 2007-AR2
170. IndyMac INDA Mortgage Loan Trust Series 2007-AR3
171. IndyMac INDA Mortgage Loan Trust Series 2007-AR4
172. IndyMac INDA Mortgage Loan Trust Series 2007-AR5
173. IndyMac INDA Mortgage Loan Trust Series 2007-AR6
174. IndyMac INDA Mortgage Loan Trust Series 2007-AR7
175. IndyMac INDA Mortgage Loan Trust Series 2007-AR8
176. IndyMac INDA Mortgage Loan Trust Series 2007-AR9
177. IndyMac INDS Home Equity Mortgage Loan Trust Series 2007-1
178. IndyMac INDX Mortgage Loan Trust Series 2007-FLX1
179. IndyMac INDX Mortgage Loan Trust Series 2007-FLX2
180. IndyMac INDX Mortgage Loan Trust Series 2007-FLX3
181. IndyMac INDX Mortgage Loan Trust Series 2007-FLX4
182. IndyMac INDX Mortgage Loan Trust Series 2007-FLX5
183. IndyMac INDX Mortgage Loan Trust Series 2007-FLX6
184. IndyMac IMJA Mortgage Loan Trust Series 2007-A1
185. IndyMac IMJA Mortgage Loan Trust Series 2007-A2

186. IndyMac IMJA Mortgage Loan Trust Series 2007-A3
187. IndyMac IMJA Mortgage Loan Trust Series 2007-A4
188. IndyMac IMSC Mortgage Loan Trust Series 2007-F1
189. IndyMac IMSC Mortgage Loan Trust Series 2007-F2
190. IndyMac IMSC Mortgage Loan Trust Series 2007-AR2
191. IndyMac IMSC Mortgage Loan Trust Series 2007-F3
192. IndyMac IMSC Mortgage Loan Trust Series 2007-HOA-1
193. IndyMac SPMD Trust Series 2000-C
194. IndyMac SPMD Trust Series 2001-A
195. IndyMac SPMD Trust Series 2001-B
196. IndyMac SPMD Trust Series 2001-C
197. IndyMac SPMD Trust Series 2002-A
198. IndyMac SPMD Trust Series 2002-B
199. IndyMac SPMD Trust Series 2003-A
200. IndyMac Certificate Trust Series 2004-2
201. IndyMac Residential Mortgage-Backed Trust Series 2004-LH1
202. IndyMac SPMD Trust Series 2004-A
203. IndyMac SPMD Trust Series 2004-B
204. IndyMac SPMD Trust Series 2004-C
205. IndyMac Residential Mortgage-Backed Trust Series 2005-L1
206. IndyMac Residential Mortgage-Backed Trust Series 2005-L2
207. IndyMac Residential Mortgage-Backed Trust Series 2005-L3
208. IndyMac INABS Trust Series 2005-A
209. IndyMac INABS Trust Series 2005-B
210. IndyMac INABS Trust Series 2005-C
211. IndyMac INABS Trust Series 2005-D
212. IndyMac Home Equity Loan Trust Series 2006-H1
213. IndyMac Home Equity Loan Trust Series 2006-H4
214. IndyMac Residential Mortgage-Backed Trust Series 2006-L1
215. IndyMac Residential Mortgage-Backed Trust Series 2006-L4
216. IndyMac INABS Trust Series 2006-A

**EXHIBIT 1**

217. IndyMac INABS Trust Series 2006-B
218. IndyMac INABS Trust Series 2006-E
219. IndyMac INDS Home Equity Mortgage Loan Trust Series 2007-2
220. IndyMac Home Equity Loan Trust Series 2007-H1
221. IndyMac Residential Mortgage-Backed Trust Series 2007-L1
222. IndyMac INABS Trust Series 2007-A
223. IndyMac INABS Trust Series 2007-B
224. Soundview Home Loan Trust Asset-Backed Certificates, Series 2007-2
225. Structured Asset Investment Loan Trust 2004-1
226. Harborview Mortgage Loan Trust Series 2006-8
227. Harborview Mortgage Loan Trust Series 2006-14
228. Harborview Mortgage Loan Trust Series 2007-7
229. Harborview Mortgage Loan Trust Series 2006-2
230. Harborview Mortgage Loan Trust Series 2004-7
231. GSAA Home Equity Trust Series 2005-4
232. BCAP Trust LLC Series 2007-AA1
233. GSR Mortgage Loan Trust Series 2006-OA1
234. GSAA Home Equity Trust Series 2006-17
235. GSAA Home Equity Trust Series 2007-4
236. GSAA Home Equity Trust Series 2004-8
237. GSR Mortgage Loan Trust Series 2007-AR2
238. GSR Mortgage Loan Trust Series 2007-OA2
239. Alliance Bancorp Bancorp Trust 2007-OA1
240. Deutsche ALT-A Securities Mortgage Loan Trust Series 2006-AR5
241. GSAMP Trust Series 2006-S4
242. Harborview Mortgage Loan Trust Series 2005-5
243. Harborview Mortgage Loan Trust Series 2006-6
244. Morgan Stanley Dean Witter Capital I Inc. Trust 2002-HE2
245. Morgan Stanley Mortgage Loan Trust 2004-1
246. IndyMac Loan Trust Series 2004-L1

**Federal Deposit Insurance Corporation as Receiver for:  
10007 – Indymac Bank, F.S.B. Pasadena, CA**

(Name of Bank/Financial Institution and Location)

**PROOF OF CLAIM**

**CONFIDENTIAL TREATMENT REQUESTED**

*Attachment A contains confidential, non-public financial information. Claimant Deutsche Bank National Trust Company requests that the claim, the information contained in Attachment A, and the non-public documents attached hereto be considered and treated as confidential.*

SSN/Tax ID # (1) see Attachment A

The undersigned, (2) Barbara Campbell, Vice President

says that the Indymac Bank, F.S.B. now in liquidation is  
(Name of Bank/Financial Institution)

justly indebted to (3) Deutsche Bank National Trust Company in the sum of  
(Individual/Joint/Corporation/Partnership/Firm/Agency)

(4) \$8,117,939,412 (approximately, see Attachment A) Dollars upon the following Claim:

	Description of (invoice) claim:	Liability Number	Amount of Claim
C L A I M S	(5) <b>See Exhibit A</b>	500006062-000	<b>\$5,439,292,941 to \$8,117,939,412 approx., (see Attachment A).</b>
		Total Claim: (6)	<b>Approximately \$8,117,939,412, (see Attachment A).</b>

The undersigned further states that he/she makes this Claim on behalf of

(7) Deutsche Bank National Trust Company

that no part of said debt has been paid, that

(8) Deutsche Bank National Trust Company  
(Individual/Joint/Corporation/Partnership/Firm/Agency)

has given no endorsement or assignment of the same or any part thereof, and that there is no set-off or counterclaim, or other legal or equitable defense to said Claim or any part thereof.

NAME Barbara Campbell, Vice  
(9)  President

(Signature of Person making the Claim) (Title)

FIRM Deutsche Bank National Trust Company  
(if applicable)

ADDRESS 1761 East St Andrew Pl  
(10)

CITY/STATE/ZIP Santa Ana, CA 92705-4934

TELEPHONE NUMBER 714-247-6278

The penalty for knowingly making or inviting reliance of any false, forged, or counterfeit statement, document, or thing for the purpose of influencing in any way the action of the Federal Deposit Insurance Corporation is a fine of not more than \$1,000,000 or imprisonment for not more than thirty years, or both (18 U.S.C. Section 1007).

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**CONFIDENTIAL TREATMENT REQUESTED**

**ATTACHMENT A**  
**to**  
**Proof of Claim of**  
**DEUTSCHE BANK NATIONAL TRUST COMPANY,**  
**AS TRUSTEE AND CUSTODIAN**

**A. CAPACITIES AND DOCUMENTS.**

1. This proof of claim ("Proof of Claim") is made by Deutsche Bank National Trust Company ("DBNTC") (a) as trustee ("Trustee") for the 243 securitization trusts listed on Exhibit A-1 attached hereto (the "Trusts"), on behalf of itself, the Trusts and the owners of certain residential mortgaged backed securities issued by the Trusts (the "Securities"), (b) as trustee of certain "net interest margin" trusts listed on Exhibit A-2 ("NIM Trusts", and collectively with the Trusts, the "Securitization Trusts") pursuant to which DBNTC owns, on behalf of NIM Trust beneficiaries, interests in certain Securities (the "NIM Trustee") and (c) as custodian (the "Custodian") under certain custody agreements listed on Exhibit A-3 (the "Custody Agreements") by and among DBNTC, and one or more of Indymac Bank, F.S.B. and/or its affiliates (collectively, "Indymac"), and/or third party lenders or purchasers of mortgage loans.
2. Each of the Trusts holds, as Trust assets or collateral, mortgage loans originated by and/or sold into the Trusts by Indymac.
3. With respect to each Trust, DBNTC entered into one or more Pooling and Servicing Agreements, Servicing Agreements, Indentures or Trust Agreements, and related ancillary agreements (collectively, the "Governing Documents"). The Governing Documents are voluminous and are in the possession of both the Trustee and Indymac. Accordingly it is impractical and wasteful to attach each and every one of them to this Proof of Claim. However, electronic files containing a representative sample of Governing Documents relating to approximately 216 Trusts have been provided to the FDIC concurrently with a copy of this Proof of Claim. Additional documentation regarding the Trusts is available on the SEC's EDGAR website at <http://sec.gov/>, and the monthly distribution reports and prospectus supplements for each Trust are available on the Trustee's investor reporting website at <https://tss.sfs.db.com/investpublic/>. Upon request by the FDIC, the Trustee will furnish electronic or hard copies of any additional Governing Documents in its possession.
4. Pursuant to the Governing Documents for each Trust, Indymac sold, either directly or indirectly, mortgage loans into the related Trusts. In connection with such sales, Indymac also made numerous representations, warranties and covenants ("Representations and Warranties") concerning the mortgage loans, which Representations and Warranties were ultimately assigned to the Trusts pursuant the Governing Documents and certain ancillary agreements. The Trusts have claims for breach of such Representations and Warranties as further described herein.

- 3 -

5. DBNTC has also served as Custodian under the Custody Agreements. Pursuant to the Custody Agreements, DBNTC has held in custody mortgage loan files evidencing mortgage loans originated, purchased, financed and/or serviced by Indymac. In addition, pursuant to certain Custody Agreements, the Custodian held and disbursed funds with respect to the funding and/or financing of such mortgage loans in accordance with instructions furnished to the Custodian by Indymac, loan purchasers or lenders. The Custody Agreements are voluminous and are in the possession of both the Trustee and Indymac. Accordingly it is impractical and unnecessary to attach them to this Proof of Claim. However, electronic files containing a representative sample of Custody Agreements have been provided to the FDIC concurrently with a copy of this Proof of Claim.
6. DBNTC is aware that certain other parties to the Trusts, including, without limitation, securities underwriters, depositors, loan servicers, insurers and investors, intend to file proofs of claim in these proceedings relating to the Governing Documents and ancillary agreements which may be duplicative of, or supplemental to, the claims stated herein (the "Third Party Trust Related Claims"). To the extent that such Third Party Trust Related Claims relate to or are property of the Trusts, DBNTC incorporates such Third Party Trust Related Claims herein by reference.

**B. DESCRIPTION OF CLAIMS.**

**Claims Arising from Breach of Representations and Warranties (Estimated Range: \$5.439 billion to \$8.117 billion)**

7. Pursuant to the Governing Documents, Indymac, as seller and [master] servicer, made certain Representations and Warranties in connection with the sale of the mortgage loans to the Trusts. Indymac has breached certain of these Representations and Warranties. Pursuant to the Governing Documents, Indymac has express contractual obligations (i) to notify certain parties to the Governing Documents, including the Trustee, when Indymac becomes aware of breaches of Representations and Warranties, (ii) to make certain cure payments with respect to certain such breaches or (iii) to repurchase the mortgage loans affected by Indymac's breaches, at the repurchase price (the "Repurchase Price") specified in the Governing Documents (typically equal to the unpaid principal balance of such mortgage loans, plus accrued interest thereon through the date of repurchase) (the "Repurchase Obligations"). Further, as described below, Indymac is liable to the Trustee and the Trusts for all liability, loss, cost and expense arising from breaches of Representations and Warranties, including all costs and expenses of enforcement of these obligations.
8. It is currently unclear to the Trustee whether Indymac Federal Bank, F.S.B., as successor-in-interest to Indymac ("Indymac Federal"), has or intends to assume or repudiate the Governing Documents. The Trustee is informed and believes, on the basis of the FDIC's public statements and on the basis of discussions with the FDIC, that Indymac Federal (or its successors and assigns) intends to assume Indymac's rights and obligations as [master] servicer of mortgages. The Trustee asserts that such servicing rights and obligations can only be assumed together with, and not separately from, Indymac's obligations with respect to Repurchase Obligations, since a single

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- 4 -

entity—Indymac—generally entered into the Governing Documents both as seller and as [master] servicer and since the Representations and Warranties were typically made by Indymac “as seller and [master] servicer.” In addition, the Governing Documents represent an integrated set of contractual undertakings on behalf of Indymac with respect to the formation and servicing of the Trusts and Indymac Federal (or its successors and assigns) cannot selectively assume the benefits of these undertakings while repudiating the related burdens. To the extent that Indymac has either (a) failed to notify the Trustee and other transaction parties of material breaches of Representations and Warranties of which it was aware, and/or (b) repudiates and fails to perform its obligations to replace or repurchase defective loans, the Trusts have claims for breach of such obligations (the “Repurchase Claims”).

9. As stated above, the Trustee serves as Trustee for 243 Trusts, which hold in excess of \$81 billion in current principal balance outstanding of mortgage loans sold to the Trusts by Indymac. Notwithstanding provisions of the Governing Documents permitting the Trustee and certain other parties access to Indymac’s books and records concerning the mortgage loans, during the last 12 months, Indymac has consistently refused to allow the Trustee, bond insurers, and investors with an interest in the Trusts to perform any meaningful due diligence to determine whether Representations and Warranties were breached. As sampling of correspondence regarding such parties’ attempts to access to mortgage loan files is attached hereto as Exhibit A-4. Moreover, immediately prior to the initiation of these receivership and conservation proceedings, disputes concerning these access rights gave rise to certain of the litigation described under “Indemnification Claims” below. Since Indymac’s denial of counterparties’ contractual inspection rights has deprived those parties of the ability to detect and quantify specific breaches of Representations and Warranties, claimants must be given reasonable access and time to investigate their claims prior to specifying them with greater particularity. Nevertheless, on the basis of the limited data currently available to the Trustee, the Trustee further describes these claims below.
10. Assuming, for purposes of this Proof of Claim, that Indymac has and will continue to breach its obligations with respect to Repurchase Claims, the damages flowing from such breaches will vary depending on the losses suffered by the Trusts in respect of the related mortgage loans. Certain of the properties underlying the mortgage loans subject to Repurchase Claims either (a) have been foreclosed upon and are owned by the Trusts as of the date of this Proof of Claim (the “REO Loans”) or (b) are owned by the Mortgagors (the “Mortgagor-Owned Loans”). The dollar amount of any Repurchase Claims related to REO Loans and Mortgagor-Owned Loans will be affected by the value of those loans and their underlying collateral because the damages suffered by the Trusts as a result of Indymac’s breach will be partially offset by the value of the collateral retained by the Trusts. Due to the ever-changing nature of market forces impacting the value of REO Loans and Mortgagor-Owned Loans, the amount due to the Trusts on account of the REO Loans and Mortgagor-Owned Loans remains in flux. Until the amount of Indymac’s exposure on REO Loans and Mortgagor-Owned Loans is finally determined, the Trusts’ corresponding claim remains unliquidated and may decrease or increase as a result of fluctuations in the valuation of the underlying property and related loans, and payments of principal and interest either made or not made by the mortgagor of the underlying loans. Certain of

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the properties underlying the mortgage loans subject to Repurchase Claims have been foreclosed upon and in turn sold ("REO Sold Loans"). The sale prices of the properties underlying the REO Sold Loans will be a partial offset to the Repurchase Price related to such REO Sold Loans.

11. On information and belief, using claims estimation methodologies that take into account (a) industry information regarding frequency of breaches of representations and warranties in portfolios of mortgage loans similar to those sold by Indymac to the Trusts, (b) the performance of the mortgage loans held by the Trusts and (c) the severity of losses experienced by the Trusts to date and anticipated in the future, the Trustee estimates that the Trusts have claims in respect to breaches of Representations and Warranties, in the estimated range of \$5.439 to \$8.117 billion.
12. Although Representations and Warranties were breached at the time that they were made, certain of the Repurchase Claims of the Trusts are unmaturing, unliquidated and/or contingent in nature because, although breaches of Representation and Warranties exist for certain mortgage loans, such breaches have not been (a) discovered and/or (b) asserted, and/or (c) otherwise given rise to claims for the Repurchase Price as of the date hereof. The actual Repurchase Claims relating to such loans would be increased by accrued interest thereon and the Trusts' cost of enforcement, and be partially offset by the value of mortgage loan collateral and mortgage payments retained by the Trusts by reason of Indymac's failure to repurchase such loans.
13. On the basis of breaches of Representations and Warranties, two mortgage insurers have sought to rescind, in their entirety or in respect of particular loans, policies of insurance on mortgage loans held by the Trusts. Such rescission claims give rise to claims of the Trust against Indymac in the following amounts:
  - (a) Rescissions asserted by MGIC: approximately \$4.9 million, plus interest and costs (See, e.g. Exhibit A-5 hereto - actual rescission letters will be provided upon request and are not attached hereto because they contain confidential borrower information).
  - (b) Rescissions asserted by Radian: approximately \$77 million plus interest and costs (See, e.g. "Indemnification Claims" below).
14. In addition to the foregoing, under the Governing Documents, Indymac is also subject to Repurchase Claims with respect to missing or defective documents in mortgage loan files. The Governing Documents generally provide that if a material defect in any Mortgage File is discovered which may materially and adversely affect the value of the related Mortgage Loan, or the interests of the Trustee (as pledgee of the Mortgage Loans), the Noteholders or the Certificateholders in such Mortgage Loan, then the responsible party shall cure such defect, repurchase the related Mortgage Loan at the purchase price or substitute a qualified substitute mortgage loan for the related Mortgage Loan upon the same terms and conditions set forth for breaches of representations and warranties as to the Mortgage.
15. The Trustee or other document custodian has furnished Indymac, on an ongoing basis, document exception reports with respect to missing or defective loan file documents.

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- 6 -

A copy of the Exception Report Summary for the Trusts is attached hereto as Exhibit A-6. If Indymac repudiates or fails to satisfy its obligations under the Governing Documents, the Trustee will require additional time to assess the materiality of the remaining missing defective documents and to calculate the amount of any Repurchase Claims with respect thereto. For purposes of this Proof of Claim, however, the Trustee asserts that all loans with missing or defective loan file documents are subject to Repurchase Claims for the Repurchase Price. The Trustee is not in a position to calculate the amount of such Repurchase Price until the population of such loans and the materiality of any document exceptions are finally determined (since borrowers continue to pay interest on some of these loans and, in many cases, other recoveries continue to be made on collateral securing such loans).

**Indemnification Claims (not less than \$77 million)**

16. The Trusts have been damaged by virtue of Indymac's defaults and breaches with respect to the Representations and Warranties under the Governing Documents and ancillary agreements. Without limiting the generality of the foregoing, the Trusts have incurred, and will continue to incur, significant legal expenses enforcing mortgage loan documents and defending against borrower counterclaims and third party claims arising from breaches or alleged breaches of Representations and Warranties or of other obligations of Indymac (including loan servicing obligations) under the Governing Documents.
17. Without limiting the generality of the foregoing, Indymac is obligated to indemnify, defend and hold the Trusts and the Trustee harmless all liability, loss, cost or expense arising from the claims asserted in the following litigation matters:
  - (a) Radian Insurance Inc. v. Deutsche Bank National Trust Company et al, filed June 26, 2008, in the United States District Court, Eastern District of Pennsylvania, seeking to rescind mortgage insurance policies which provide certain Trusts with approximately \$77 million of aggregate coverage for losses on Indymac-originated mortgage loans, by reason of Indymac's breach of Representations and Warranties. To the extent that Radian prevails in this suit, Indymac will be liable to the Trusts for the full amount of all lost coverage, plus all litigation expenses.
  - (b) Indymac v. Radian Insurance Inc., filed on June 27, 2008 in the Superior Court of California, County of California, in which Indymac seeks to enforce the policies at issue in the foregoing matter. These matters are likely to be consolidated into a single matter for disposition.
  - (c) Indymac v. Financial Guaranty Insurance Company ("FGIC") filed on July 1, 2008 in the United District Court, Central District of California, seeking a declaration that Indymac has not breached certain Governing Documents, as alleged by FGIC in correspondence and in the following matter.
  - (d) FGIC v. Indymac filed on July 1, 2008 in the United States District Court, Southern District of New York. Suit for breach of contract, specific performance, declaratory relief by FGIC, a bond insurer with respect to securities issued by certain Trusts, alleging INDY has breached various obligations under Governing Documents

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- 7 -

for those Trusts, including the obligation to furnish access to books and records concerning mortgage loans held by certain Trusts.

(e) XL Capital Assurance v. Indymac filed on June 27, 2008 in the United District Court, Southern District of New York, A claim by a bond insurer with respect to securities issued by certain Trusts, claiming that Indymac has breached its obligations under relevant Governing Documents and seeking access to books and records relating to mortgage loans held by certain Trusts.

(f) Suits and other proceedings against the Trusts and/or the Trustee by the cities of Buffalo, NY, Cleveland, OH, and other jurisdictions claiming that REO properties owned by the Trusts have not been maintained in accordance with law and constitute a nuisance. In addition, the Trusts and/or the Trustee have been forced to address similar allegations. Such property maintenance is the sole obligation of Indymac, as loan servicer, with respect to certain of the properties at issue in these matters. The affected Trusts and the Trustee are entitled to indemnification by Indymac, its successors and assigns, against any liability, loss, cost or expense suffered in connection with such matters

(g) Suits or counterclaims (typically asserted in the context of foreclosure proceedings) alleging breaches, inter alia, of the Truth in Lending Act, Fair Debt Collection Practices Act and other laws, in connection with the origination and/or servicing of Indymac-originated mortgage loans currently owned by Trusts. The affected Trusts and the Trustee are entitled to indemnification by Indymac, its successors and assigns, against any liability, loss, cost or expense suffered in connection with such matters.

(h) Allegations by certain Trust investors that Indymac, as [master] servicer, has failed to charge-off mortgage loans in accordance with the Governing Documents.

18. Pursuant to the Governing Documents and applicable law, Indymac is liable to the Trusts and the Trustee for any losses, claims, expenses or damages, including legal fees and related costs, arising out of or based upon any breaches of any representation, warranty or covenant made by Indymac or any affiliate of Indymac in the Governing Documents. Such liability arises both from Indymac's breach of its contractual obligation to the Trusts and the Trustee to perform all of its obligations under the Governing Documents and from Indymac's obligation to indemnify, defend and hold the Trusts and the Trustee harmless from any liability, loss, cost or expense arising from Indymac's failure to perform such obligations. To the extent that Indymac (a) assumes, or assumes and assigns, any of its rights under the Governing Documents, and (b) indemnifies, or causes its successor-in-interest to indemnify, the Trusts and the Trustee for such matters, such indemnification obligation will have been satisfied. Although, to date, Indymac Federal in conservation has performed certain of such obligations, Indymac, Indymac Federal and the FDIC have not expressly assumed, or assumed and assigned, such obligations. Accordingly, for purposes of this Proof of Claim, the Trustee assumes such obligations may not be fully satisfied.

19. Based upon the foregoing, the Trustee asserts a claim against Indymac for indemnification for, *inter alia*, all losses, claims, expenses and damages, including legal fees and related costs, arising out of or based upon any breaches of any representation, warranty or covenant made by Indymac under the Governing Documents.

### Servicing Claims

20. As stated above, Indymac generally served as “servicer” or “master servicer” with respect to the mortgage loans held by the Trusts. The Trustee is informed and believes, on the basis of the FDIC’s public statements and on the basis of discussions with the FDIC, that Indymac Federal (or its successors and assigns) intends to assume Indymac’s loan servicing rights and obligations. To the extent that such assumption takes place, and the successor-in-interest to Indymac, as [master] servicer, performs all obligations of Indymac, as [master] servicer, under the Governing Documents (including by curing any breaches that have occurred), Indymac will have mitigated claims with respect to Indymac’s servicing of the loans. The Trustee reserves the right to amend this Proof of Claim to specify further any servicing claims in the event that such assumption does not take place. In addition, as a precaution, the Trustee describes below certain issues relating to Indymac’s and Indymac Federal’s servicing of loans, which issues may have given rise to and/or may, in the future, give rise to breaches of Indymac’s and/or Indymac Federal’s obligations in respect to the servicing of mortgage loans on behalf of the Trusts.
21. On the basis of the Trustee’s investigations to date, the Trustee notes the following possible inadequacies in Indymac and/or Indymac Federal’s servicing of mortgage loans on behalf of the trusts:
- (a) Loss mitigation activities may suffer from the material deficiencies that violate the Governing Documents, due to (i) inadequate or improper staffing of key functions, resulting in collections delays and losses, (ii) inadequate or improper controls over loss mitigation activities, (iii) substantive and procedural biases against effective collection activity and in favor of loan modifications, even when such modifications are likely to result in a lower net present value return on the mortgage loans to the Trusts, and (iv) poor organization and accountability regarding loss mitigation efforts.
  - (b) Failure to notify the Trustee and other transaction parties of breaches of Representations and Warranties known to Indymac.
  - (c) Allegations by certain Trust investors that Indymac, as [master] servicer, has failed to charge-off mortgage loans in accordance with the Governing Documents.
22. In addition, in the event that any of the obligations of Indymac as [master] servicer are subsequently repudiated by the FDIC, the Trustee will be obligated, pursuant to the terms and conditions of the Governing Documents, to replace Indymac as [master] servicer. All loss, cost and expense of such replacement will constitute additional claims against Indymac and/or Indymac Federal Bank

### Claims as NIM Trustee

- 9 -

23. As NIM Trustee, the Trustee is the legal owner, for the benefit of securities holders under the NIM Trusts, of Securities issued by the Trusts. Since the NIM Trusts were formed concurrently and in conjunction with the corresponding Trusts, the NIM Trustee was the original purchaser of such Securities.
24. As purchaser of the such Securities on behalf of the NIM Trusts, the NIM Trustee hereby alleges that, to the extent that Indymac knew or should have known of the breaches of Representations and Warranties described above, the NIM Trusts have a claim for common law fraud and/or negligent misrepresentation and/or violation of applicable federal and state securities laws in connection with the issuance, distribution and sale of the such Securities to the NIM Trusts. Such claim is unliquidated and partially unmatured, but would be measured by the impact, if any, of such breaches on cash flows to the NIM Trusts.

### **Claims as Custodian**

25. Pursuant to the Custody Agreements, DBNTC is entitled to be paid certain fees stipulated therein, plus expenses incurred in connection with its serving as Custodian. In addition, where Indymac is seller/servicer under the Custody Agreement, Indymac has agreed to indemnify, defend and hold the Custodian harmless against all liabilities, loss, cost and expense incurred by the Custodian in the performance of its duties as Custodian. (See, e.g., Exhibit A-7).
26. Indymac has generally continued to pay the fees and expenses of DBNTC as Custodian upon invoicing thereof. As of the date hereof, however, approximately \$243,122.35 in fees and expenses incurred by DBNTC as Custodian remain due and payable by Indymac. Additional invoices for fees and expenses that have been received by the Custodian to date have been submitted to Indymac for payment pursuant to the related Custody Agreements and Governing Documents. The Custodian will furnish to Indymac, under separate cover, copies of such invoices, together with invoices for fees incurred (and included in such amount) but not invoiced as of the date hereof.

### **C. MISCELLANEOUS**

27. By executing and filing this Proof of Claim, DBNTC does not waive any right to any security or any other right or rights with respect to any claim that DBNTC has or may have against Indymac or any other person or persons. The filing of this Proof of Claim is not intended and should not be construed to be an election of remedies or waiver of any past, present or future Defaults or Events of Default under the Governing Documents and ancillary agreements.
28. To the knowledge of the signatory hereto, the claims are not subject to any setoff or counterclaim, and no judgment has been rendered on the claims. The amount of all payments made prior to the date hereof, if any, have been credited and deducted.
29. DBNTC reserves its right to amend and/or supplement this Proof of Claim and to assert any and all other claims of whatever kind or nature that it has, or may have, that come to DBNTC's attention or arise after the filing of this Proof of Claim. The filing of this Proof of Claim shall not be deemed a waiver of any such claims or rights.

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30. Nothing contained in this Proof of Claim shall be deemed or construed as: (a) a waiver of, or other limitation on, any rights or remedies of DBNTC or the Securitization Trusts, or any predecessor in interest to DBNTC or the Securitization Trusts, under the Governing Documents or ancillary agreements, at law, or in equity (including any setoff rights, lien rights, rights of recoupment, or any other rights that the Trustee or each Trust has or may have against Indymac or any other entity), all of which rights are expressly reserved; (b) a consent by DBNTC or the Securitization Trusts, or any predecessor in interest to DBNTC or the Securitization Trusts, to the jurisdiction of any court with respect to proceedings, if any, commenced in any action against, or otherwise involving DBNTC or the Securitization Trusts, or any predecessor in interest to DBNTC or the Securitization Trusts; (c) a waiver or release of, or any limitation on DBNTC's or the Securitization Trusts', or any predecessor in interest to DBNTC's or the Securitization Trusts', right to trial by jury in the Court or any other court in any proceeding; (d) a waiver or release of, or any other limitation on, DBNTC's or the Securitization Trusts', or any predecessor in interest to DBNTC or the Securitization Trusts', rights to have any orders entered only after de novo review by the applicable court; (e) a waiver of, or any other limitation on, DBNTC or the Securitization Trusts', or any predecessor in interest to DBNTC's or the Securitization Trusts', right to seek a withdrawal of the reference with respect to any matter, including any matter relating to this Proof of Claim; or (f) a waiver or release of, or any other limitation on, DBNTC's or the Securitization Trusts', or any predecessor in interest to DBNTC's or the Securitization Trusts', right to assert that any portion of the claims asserted herein are entitled to treatment as priority claims. Without limiting the generality of the foregoing, the Trustee asserts, on behalf of each Trust and itself, the right to set off the amount of all claims of such Trust and itself as Trustee of such Trust, against all claims and amounts assertable by or distributable to Indymac (or its successors-in-interest under the Governing Documents) in any capacity, including, without limitation, any rights of Indymac to recover delinquency advances, servicing advances or other amounts distributable with respect to securities or other interests in such Trusts.



Federal Deposit Insurance Corporation  
1601 Bryan Street, Dallas, TX 75201

Division of Resolutions and Receiverships

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED – 7008 1830 0000 8031 9925**

March 31, 2009

Deutsche Bank National Trust Company  
Attn: Kellie Rodriguez  
Case # 07CH18916 USDC=08 C 1183  
1761 East Saint Andrew Place  
Santa Anna, CA 92705

SUBJECT: 10007– IndyMac Bank, F.S.B.  
Pasadena, CA – In Receivership  
**NOTICE OF DISALLOWANCE OF CLAIM**

Dear Claimant:

The Receiver of IndyMac Bank, F.S.B. has reviewed your claim against the receivership. After a thorough review of your filed claim along with your supporting documentation, the Receiver has determined to disallow your claim for the following reason(s):

Your claim was not fixed and certain as of bank failure on July 11, 2008 and therefore your claim is not proven to the satisfaction of the Receiver.

Pursuant to 12 U.S.C. Section 1821 (d) (6), if you do not agree with this disallowance, you have the right to file a lawsuit on your claim (or continue any lawsuit commenced before the appointment of the Receiver), in the United States District (or Territorial) Court for the District within which the failed institution's principal place of business was located or the United States District Court for the District of Columbia within 60 days from the date of this notice.

**IF YOU DO NOT FILE A LAWSUIT (or continue any lawsuit commenced before the appointment of the Receiver) BEFORE THE END OF THE 60-DAY PERIOD, THE DISALLOWANCE WILL BE FINAL, YOUR CLAIM WILL BE FOREVER BARRED AND YOU WILL HAVE NO FURTHER RIGHTS OR REMEDIES WITH RESPECT TO YOUR CLAIM. 12 U.S.C. Section 1821(d)(6)(B).**

However, if a portion of your claim is for an insured deposit, your claim is not against the Receiver but rather is against the FDIC in its "corporate" capacity as deposit insurer. An insured depositor's rights are prescribed in 12 U.S.C. Section 1821(f) and differ from the rights described in the preceding paragraphs.

If you have any questions about this letter, please contact the undersigned at (872) 761-2665.

Sincerely,

Jeffrey M. Quick  
Claims Agent  
Claims Department

EXHIBIT 3  
Page 63

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Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: **KELLIE RODRIGUEZ, DEUTSCHE BA**  
 Street Apt No: **1761 E. ST. ANDREW PL**  
 or PO Box No:  
 City, State, ZIP+4: **SANTA ANA, CA 92705**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Deutsche Bank National Trust Company  
(For complete name see Attachment)

PLAINTIFF(S)

v.

Federal Deposit Insurance Corporation  
(For complete name see Attachment)

DEFENDANT(S).

CASE NUMBER

CV09-3852

GAF (FFM)

SUMMONS

TO: DEFENDANT(S): Federal Deposit Insurance Corporation (For complete name see Attachment at B)

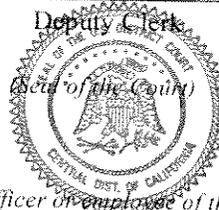
A lawsuit has been filed against you.

Within 60 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached  complaint  \_\_\_\_\_ amended complaint  counterclaim  cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Jami Wintz McKeon, whose address is Morgan Lewis & Bockius, One Market, Spear Street Tower, San Francisco, CA, 94105. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: MAY 29 2009

By: NATALIE LONGORIA



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

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**ATTACHMENT TO SUMMONS**

**PLAINTIFF:**

**Deutsche Bank National Trust Company**, as Trustee for certain residential mortgage-backed securitization trusts sponsored by IndyMac Bank, F.S.B.

**DEFENDANT:**

**Federal Deposit Insurance Corporation**, as Receiver of IndyMac Bank, F.S.B.; Federal Deposit Insurance Corporation, as Conservator and Receiver of IndyMac Federal Bank F.S.B.; Federal Deposit Insurance Corporation, in its corporate capacity; and Federal Deposit Insurance Corporation, as Government Entity



UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed?  No  Yes  
If yes, list case number(s): \_\_\_\_\_

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case?  No  Yes  
If yes, list case number(s): \_\_\_\_\_

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)  A. Arise from the same or closely related transactions, happenings, or events; or  
 B. Call for determination of the same or substantially related or similar questions of law and fact; or  
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.  
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.  
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.  
**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
All claims arose in Los Angeles County	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date May 29, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

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**ATTACHMENT TO CIVIL COVER SHEET**

**I. DEFENDANTS:**

**Federal Deposit Insurance Corporation**, as Receiver of IndyMac Bank, F.S.B.;  
Federal Deposit Insurance Corporation, as Conservator and Receiver of IndyMac  
Federal Bank F.S.B.; Federal Deposit Insurance Corporation, in its corporate  
capacity; and Federal Deposit Insurance Corporation, as Government Entity

**VI. CAUSE OF ACTION:**

All causes of action are against the Federal Deposit Insurance Corporation (FDIC)  
in various capacities as more fully specified in the Complaint, and arise under the  
Constitution and laws of the United States including the Federal Deposit Insurance  
Act, 12 U.S.C. § 1811, et seq., as amended by the Financial Institutions Reform,  
Recovery Enforcement Act ("FIRREA"), 12 U.S.C. § 1821, et seq., or other  
applicable law.