UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUPER FUTURE EQUITIES, INC.	§	
	§	
Plaintiff,	§	
vs.	§	
	§	
WELLS FARGO BANK MINNESOTA, N.A. , *as Trustee of the Certificateholders of Merrill Lynch Mortgage Investors CMBS Pass Through Certificates Series 1999-C1, and as Trustee of the Certificateholders of First Union-Lehman Brothers-Bank of America Commercial Mortgage Pass-Through Certificate Series 1998-C2* **ORIX CAPITAL MARKETS, LLC, ORIX CAPITAL MARKETS PARTNERSHIP, ORIX USA CORPORATION, JOHN DINAN, MICHAEL WURST, CLIFFORD WEINER, JAMES R. THOMPSON, KEYCORP, INC., and KEYCORP REAL ESTATE CAPITAL MARKETS, INC**.	§	**C. A. No. 3-06-CV-0271 B**
	§	
***Defendants*.**	§	

PLAINTIFF'S THIRD AMENDED COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

SUPER FUTURES EQUITIES, INC. ("Plaintiff" or "SFE") files this Third Amended Complaint and respectfully shows as follows:

I. JURISDICTION

1. This Court has jurisdiction pursuant to 18 U.S.C. § 1964(c) and 28 U.S.C. §1331.

II. VENUE

2. Venue is proper in the Northern District of Texas pursuant to 18 U.S.C. § 1965 (a) and 28 U.S.C. § 1391(b).

III. PARTIES

Plaintiff:

3. Plaintiff Super Future Equities, Inc., ("Plaintiff") is a Nevada Corporation with its principal place of business in the State of Texas.

Defendants:

4. Defendant ORIX Capital Markets LLC, ("ORIX"), a Delaware Corporation with its principal place of business in Dallas, Texas, has made an appearance in this cause.

5. Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), formerly Wells Fargo Bank Minnesota, N.A., has its principal place of business in San Francisco, California, and lists Sioux Falls, South Dakota as the location of its "main office" in its Articles of Association. Wells Fargo has made an appearance in this cause.

6. Defendant John Dinan ("Dinan"), an individual residing in Texas, has made an appearance in this cause.

7. Defendant Michael F. Wurst ("Wurst"), an individual residing in California, has made an appearance in this cause.

8. Defendant Clifford Weiner ("Weiner"), an individual residing in Texas, has made an appearance in this cause.

9. Defendant James R. Thompson ("Thompson"), an individual residing in Texas, has made an appearance in this cause.

10. Defendant ORIX Capital Markets Partnership ("ORIX Partnership" or the "Partnership"), believed to be a Texas Partnership with its principal place of business in Dallas, Texas, has been served with process by serving one of its partners, John Dinan at ORIX Capital Markets, LLC, 1717 Main Street, Suite 900, Dallas, Texas 75201. To date, the Partnership has not made an appearance in this cause.

11. Defendant ORIX USA Corporation ("ORIX USA")[1], a Delaware corporation with its principal place of business in Dallas, Texas, has made an appearance in this cause.

12. Defendant KeyCorp, Inc. ("KeyCorp"), an Ohio corporation with its principal place of business in Cleveland, Ohio, but which has a registered agent for service in Texas, may be served with process through its designated agent for service, Corporation Service Company, 701 Brazos Street, Suite 1050, Austin, TX 78701.

13. Defendant KeyCorp Real Estate Capital Markets, Inc. ("KeyCorp Real Estate"), an Ohio corporation with its principal place of business in Cleveland, Ohio, but which maintains an office at 1717 Main Street, Suite 900, Dallas, Texas 75201 and has a registered agent for service in Texas, may served with process through its designated agent for service, Corporation Service Company, 701 Brazos Street, Suite 1050, Austin, TX 78701.

IV. NATURE OF THE ACTION

14. This case arises out of Defendants' egregious and ongoing breaches of contractual and fiduciary obligations as "Special Servicer" and Trustee, respectively, of certain mortgage loans pooled together in a trust fund. Both ORIX and Wells Fargo have devised business plans

[1] ORIX, ORIX USA, ORIX Partnership, Thompson, Weiner, Dinan, and Wurst are sometimes collectively referred to herein as the "ORIX Conspirators" or the "ORIX Defendants."

to reap millions of dollars in profits at the expense of Plaintiff and other investors in certain trust funds.

V. FACTS

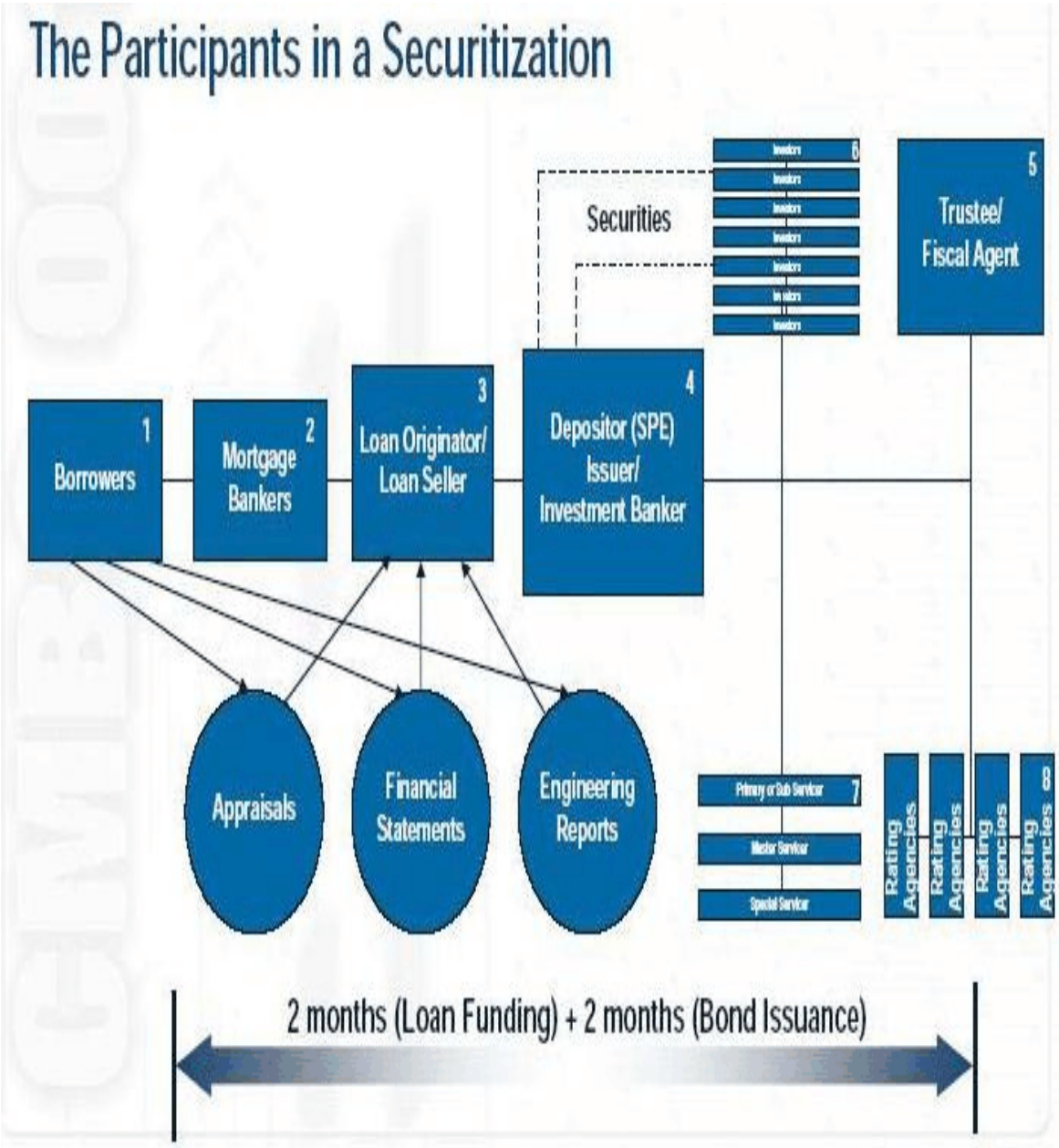
Commercial Mortgage Backed Securities

A. General Background

15. Commercial Mortgage Backed Securities ("CMBS") are debt instruments or bonds secured by real estate mortgages, typically mortgage loans on apartment complexes, shopping centers, hotels, and office buildings. To create mortgage backed securities, a group of mortgages is assembled into a pool, transferred into a trust, securitized, and marketed to investors as "pieces" of the pool in the form of "Certificates" (bonds, actually) representing interests in the trust's pool of mortgages. The investors, or "Certificateholders," like Treasury bond investors, receive monthly payments on their investments. The maturity of the Certificates coincides with the term of the underlying mortgages (balloon payment) in the CMBS trust pool. The CMBS business is a several trillion dollar a year industry and growing. Retirement funds, pension funds, and other fixed income funds are the typical purchasers of CMBS Certificates, which are viewed as conservative investments in the financial world.

16. The parties to CMBS are usually (1) the Real Estate Borrowers of the Mortgage Loans, (2) the Mortgage Loan Sellers, who assign the Mortgage Loans to (3) the Depositor who collects and securitizes the Mortgage Loans, and in turns assigns them to (4) a Trust, where the pool of loans are deposited for the (5) Trustee to oversee and administer for the benefit of the Certificateholders; (6) the Underwriter, who markets and sells the Certificates at public as well as private offerings; (7) the Certificateholders who purchase the bonds; (8) the "Servicer," (or "Master Servicer"), who is responsible for servicing all of the performing loans in the pool (i.e.

receiving payments from the borrowers, depositing income into the Trust accounts, arranging timely distributions of cash payments to the Certificateholders, and making any required advances or payments that the Trustee fails to make); and (9) the "Special Servicer," who is responsible for servicing loans which are in default or in imminent risk of default. One of the Special Servicer's duties is to work with troubled borrowers so that they may continue making payments on their loans.



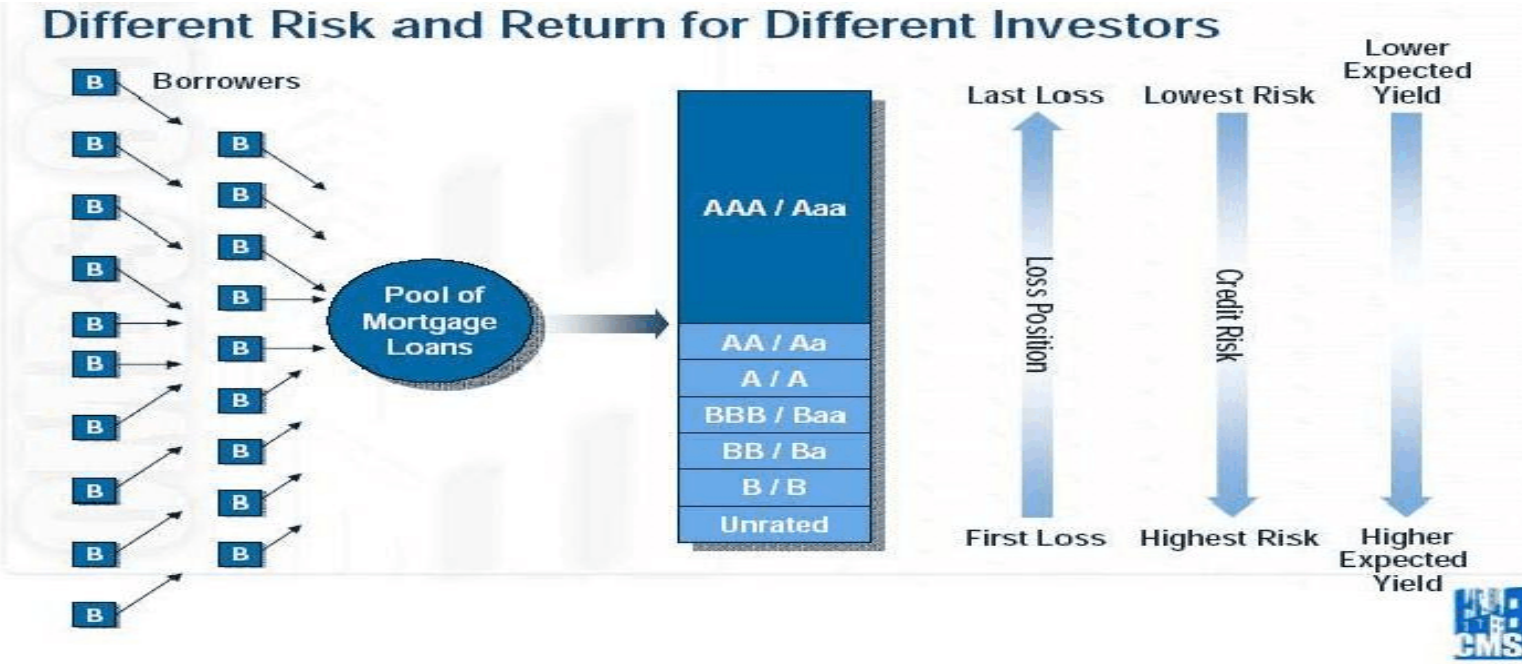
17. With the cooperation of all participants, and in compliance with the Securities Act of 1933, 15 U.S.C. § 77a *et. seq.*, as amended, the Depositor files a disclosure Statement with the Securities and Exchange Commission ("SEC"), of which the Prospectus given to all investors forms a part. The Prospectus is available to all persons who wish to purchase Certificates.

18. In addition to the representations and disclosures contained in the Prospectus, the investors are supposed to be protected by the checks and balances set forth in painstaking detail in the "Pooling and Servicing Agreement" ("PSA") by and between the (1) "Depositor," (2) "Servicer," (3) Special Servicer, and (4) Trustee. The PSA sets forth procedures and criteria to ensure the benefit of the Certificateholders through smooth servicing of the mortgaged loans and distribution of proceeds through the trust.

19. As debt securities, the Certificates are rated by independent third parties (professional rating agencies, including Fitch, Standard & Poor's ("S&P") and Moody's Investor Service) in accordance with the risk involved in the investment. Broken down into series reflecting the varying levels of risk and rate of return, the Certificates are sold at private and public offerings. The publicly sold Certificates usually rate between AAA to BBB– at the time of issuance. The ratings of the privately offered certificates range from BB+ to unrated. Only limited and "sophisticated" investors are invited to bid at private offerings.

20. Class "A" Certificates represent the most solid investment (i.e., least amount of risk). They are entitled to the first payments from the borrowers at the designated coupon rate and, as a result, command a higher price and pay a lesser interest. Holders of the lowest series Certificates, known as "B-Pieces" or "first loss," receive payments only after all other certificates are paid. This lower class of certificates bears higher risks, including risks of more

defaults than anticipated. To compensate for the heightened risks, the lowest certificates are sold at the greatest discount to face value (par) and receive the highest interest.



21. Any entity that owns the majority of the "B-Piece" Certificates is known as the "Controlling Class." As a rule, to further compensate for the "first-loss" risk, the Controlling Class has the right to appoint the Special Servicer. As loans default and other risks materialize, such that funds received from borrowers are insufficient to make principal and interest distributions to the lowest "B-Pieces," the unpaid "B-Pieces" are defaulted or "junked." In this manner, one class or "tranche" at a time is eliminated. After each elimination, the next lowest class of Certificates assumes the "first-loss" risk, becomes the "Controlling Class," and is entitled to designate the Special Servicer of its choice.

22. The "Servicer" and "Special Servicer" have different duties and are compensated differently, although both are fiduciaries of the Trust and Certificateholders. Collection of monies from borrowers, distribution of principal and interest payments to Certificateholders, and

communications with borrowers are tasks performed exclusively by the Servicer, except under very limited circumstances. Customarily, a loan is only transferred to Special Servicing upon some "event of default."

23. The Special Servicer's fiduciary responsibilities to the Certificateholders include the "work-out" of problem loans (i.e. working out solutions to ensure the performance of loans in risk of failure and the return of same back to the Servicer as performing loans). Because the only benefit the Certificateholders receive is the principal and interest payments that borrowers make, the Special Servicer is under a duty to make all reasonable efforts to get troubled borrowers back in a stable financial position so as to enable such troubled borrowers to resume their monthly principal and interest payments. In addition, Special Servicers' fiduciary responsibilities include accurately reporting certain data with respect to the financial health of the Trust, including number of bankruptcies, servicing fees, and Trust expenses.

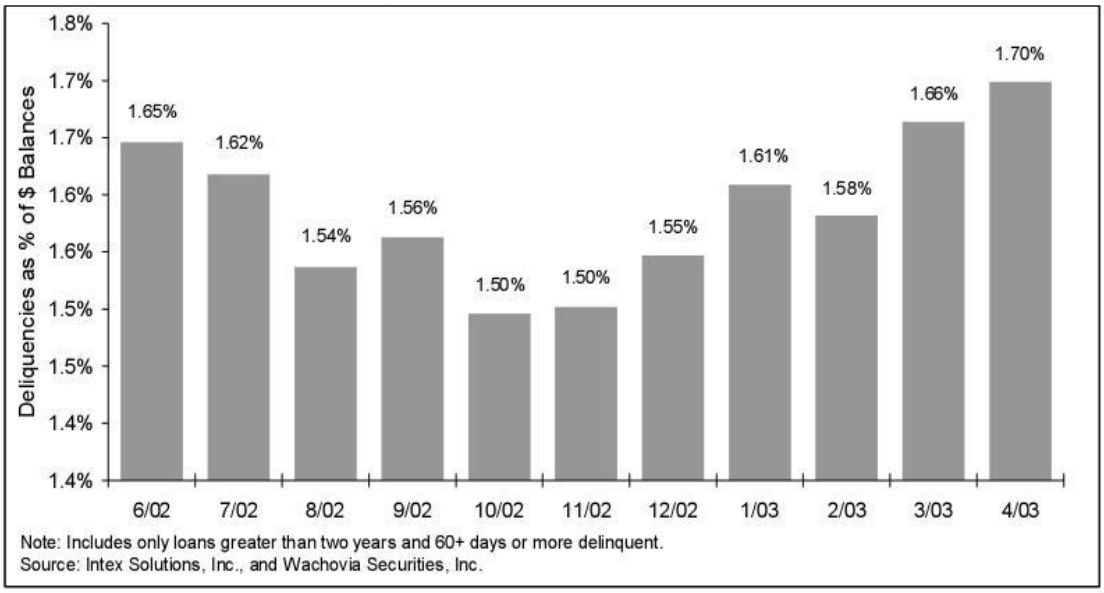
24. The Trustee's duties include overseeing the Servicer and Special Servicer to assure that the Servicer and Special Servicer are fulfilling their duties with respect to the Trusts. Upon receipt of various reports or other documents regarding the "health" of the Trust from the Servicer and/or the Special Servicer, the Trustee should examine such documents for accuracy and accurately report same to the Certificateholders.

25. Properly serviced CMBS trusts should, and actually do, work like well-oiled machines. Trustees and Servicers act in the best interest of all Certificateholders and receive for their labors the respective percentages of the pool's value as set forth in the Prospectus and PSA. The Servicer receives a percentage of value of the loans within the pool, and the Special Servicer receives a higher percentage of the value of the loans in special servicing. Because Special Service fees run many times higher than regular servicing, the Prospectus and PSA set forth the

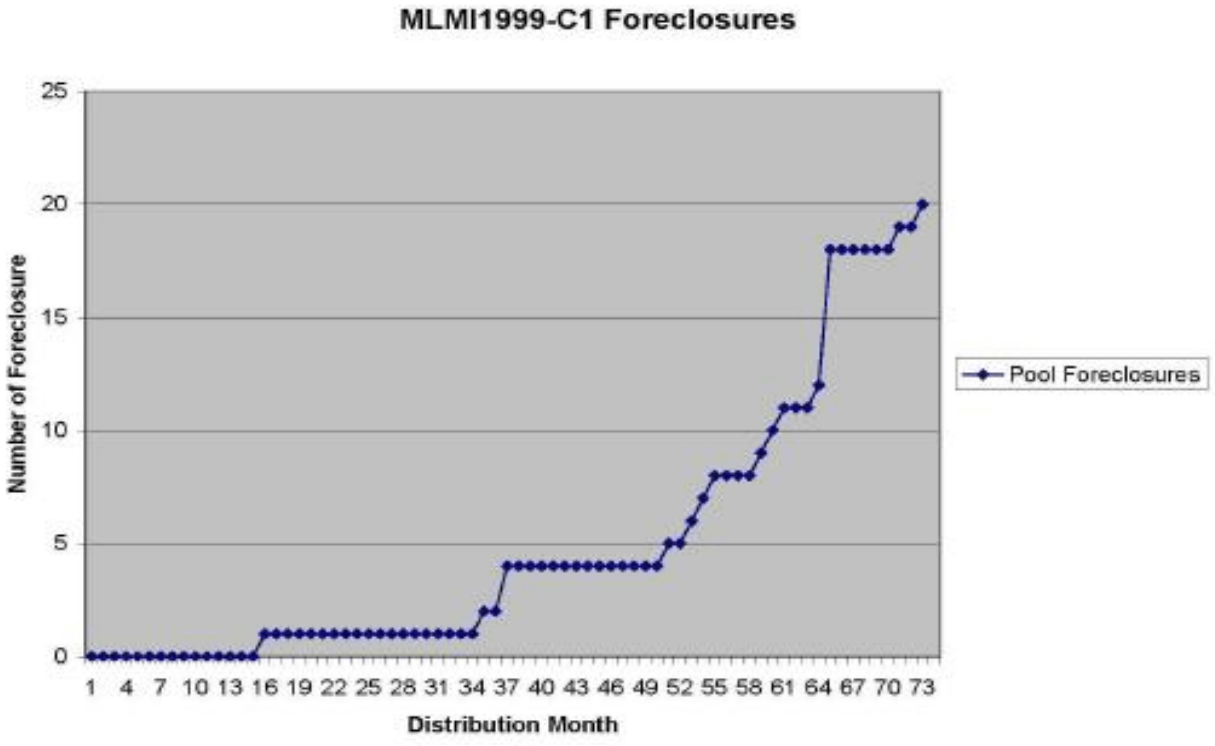
particular events that trigger placement of loans into special servicing and the procedures therefor. The Special Servicer is duty bound to endeavor to work out solutions for problem loans and to return same back to the Servicer as soon as possible. If work out fails, as a last resort, the Special Servicer, with approval of the Controlling Class, forecloses the loan in the way most economical for the Certificateholders.

26. Statistics show that at any given time CMBS usually have approximately 2 % of the pooled loans in "special servicing" or "delinquent" status, all but a fraction of which are "worked out" – i.e., the problem is solved, foreclosure is avoided, and the mortgage is returned to regular servicing. Furthermore, as long as the borrower is making timely principal and interest payments, most Servicers will not transfer the loan to Special Servicing. Where Wells Fargo and ORIX combine as Trustee and Servicer, statistics show that nearly 30% of the loans in the pool end up in Special Servicing (Delinquency rate). Statistics further show that the default rate for CMBS loans is approximately 2 to 3% of the mortgaged pool over the term of the life of the Trust. The default rate from the combination of Wells Fargo as Trustee and ORIX as Special Servicer can be as high as 20%, as evidenced by the MLMI and FULBBA Trusts that are the subject of this litigation.

Exhibit 1: Total CMBS Delinquency Trends



Note: Includes only loans greater than two years and 60+ days or more delinquent.
Source: Intex Solutions, Inc., and Wachovia Securities, Inc.



27. The Servicer and Special Servicer are hired to serve and assist borrowers in the performance of their obligations under the mortgaged loans, to safeguard the Certificateholders' principal investment, and to collect and distribute the promised monthly income. The Special Servicer is never to place its ownership interests before the interests of any other Certificateholders in the Trust. To do so is improper, violates the Servicing Standard set forth in the PSA, is unethical, and constitutes a breach of the Special Servicer's fiduciary duty.

B. ORIX/Wells Fargo CMBS

28. Unfortunately, placing its own interests before that of the Trust and other Certificateholders is exactly what ORIX, as Special Servicer, has done in the present case, as well as in other Trusts in which ORIX has acted in the same capacity. ORIX has systematically disabled the CMBS's control structure, which is precisely designed to prevent unilateral control over the mortgaged loans by any single player. PSAs expressly or impliedly impose fiduciary duties on the Servicers towards the Trust and *all* of the Certificateholders. Despite such fiduciary duties, ORIX has devised several schemes to increase its own revenues, not only at the expense of the Trust and Certificate-holders; but also at the expense of Borrowers and Depositors.

29. If not originally designated as Servicer *and* Special Servicer, ORIX covertly purchases "B" Pieces of certain "targeted" Trusts at highly discounted prices, in order to gain "Controlling Class" privileges. Thereafter, using its Controlling Class status, ORIX appoints and/or maintains itself as both Servicer *and* Special Servicer.

30. Because all Special Servicer duties command higher fees, it is in the best interest of the Certificateholders and the Trust to have different and unrelated entities as Servicer and

Special Servicer. Identity of Servicer and Special Servicer provides too much opportunity to transfer performing loans to Special Servicing in order to quadruple the servicing fees. Identity of Servicer and Special Servicer creates an inherent conflict of interest likely to subject Certificateholders to excessive servicing fees.

31. Fitch Ratings, an enterprise that evaluates and rates Special Servicers in American CMBS, recently noted that Special Servicers are subject to substantial conflicts of interest and that opportunistic servicing could cause an adverse impact on a rating given to a Trust's certificates where

> a special servicer, based on its role in the transaction, creates self-serving revenue-garnering opportunities through excessive litigation, and/or opportunistic servicing by unnecessarily transferring assets into special servicing.... Fitch has concerns when the interpretations of documents benefit the special servicer only, allowing them to take no risk with their own capital and potentially creating expenses to the Trust.

See Business Wire Release, September 24, 2003. Such is exactly ORIX's *modus operandi.*

(1) ORIX and ORIX USA's Business Plan

32. While technically ORIX USA is the parent company of ORIX, they are essentially the same entity, as they share common objectives, officers and directors. According to ORIX USA's website, Thompson, Chairman and CEO of ORIX Capital Markets since 1997, also became President and CEO of ORIX USA in 2004. Therefore, during the time SFE has held its investment, Thompson was both Chairman and CEO of ORIX Capital Markets and President and CEO of ORIX USA. Thompson has 26 years of comprehensive experience in US capital markets, and initiates and manages ORIX USA's activities in the commercial mortgage securities' market, i.e., CMBS. Additionally, Thompson is responsible for managing ORIX

Corporations' operations in the United States. Thompson was not only actively involved in the CMBS activities, but also making litigation decisions and tactics.

33. There is so much over lap and cross-over between ORIX Capital Markets and ORIX USA that Dinan, a Director of ORIX Capital Markets and in charge of Special Servicing nationwide, was recently unable to definitively testify as to whether he was paid by ORIX Capital Markets or ORIX USA.

34. Weiner is Managing Director of ORIX Capital Markets Real Estate Group, and is responsible for the oversight of all portfolios in which ORIX is a Certificateholder, including the MLMI and FULBBA Trusts.

35. Wurst is the Director of Distressed and Proprietary Assets for ORIX Capital Markets. He is responsible for the management and oversight of all specially serviced loans and foreclosed properties with respect to the MLMI and FULBBA Trusts.

36. Dinan, Wurst, Weiner and Thompson collectively made all decisions with respect to which loans to transfer to special servicing, which loans to foreclose upon, the amount of advances made to the Trusts, litigation strategies, and compilation of all data contained in the Distribution Reports for the MLMI and FULBBA Trusts.

37. ORIX's pattern of initiating litigation against mortgage loan sellers (including Wachovia, Lehman Brothers, Bank of America, Nomura, Solomon Brothers, Artesia and UBS), has revealed that ORIX's motives and "business plan" are designed to further its own interests as a "B-Piece" investor at the expense of the Trust and the more senior Certificateholders.

38. In 2002, ORIX expanded its business activities from those of a mere loan servicer to those of a market manipulator and unscrupulous "litigation machine." *See* attached Exhibit

"A" at 182-93. ORIX's sole purpose is to pad its own and certain of its employees' pockets at the expense of unsuspecting and unfortunate Borrowers, Depositors and Certificateholders.

39. To this effect, ORIX created a Portfolio Management and Surveillance Department ("Surveillance Department"). The Surveillance Department, was managed by attorneys Cliff Weiner, John Dinan, and Michael F. Wurst whose sole purpose was to enrich ORIX (and themselves) without regard to the fiduciary duties owed to all Certificateholders. All of the loans in all of the pools in which ORIX had a financial interest (i.e. those in which ORIX owned "B-Pieces") were analyzed by the Surveillance Department. Dinan and Wurst reported to Weiner who was in charge of the Surveillance Department. Weiner reported to Jim Thompson whose career expertise is capital markets such as CMBSs. Wurst, Dinan, Weiner, and Thompson were responsible for the operation of ORIX's special servicing function of all trusts in which ORIX held a B-piece investment and in which ORIX was the Special Servicer of the Trust, including the MLMI and FULBBA Trust which are the subject of this litigation.

40. In addition, as an incentive for certain officers and employees to destroy borrowers and extort money from Depositors, ORIX set up a furtive Partnership (the "Partnership") to allow such officers and employees to participate in ORIX's profits. The sole purpose of the Partnership was to create an incentive for key ORIX employees to breach their fiduciary duty to the Trust and the Certificateholders and to pad their own pockets, along with the coffers of ORIX. After the advent of the Partnership, the more profit ORIX made, the bigger the pot of money in the Partnership, and the richer those select employees became. This Partnership was not disclosed to investors or prospective Certificateholders in any document. In

addition, the existence of such Partnership has never been disclosed to the SEC in any 10-K report.

41. The Partnership, which is limited to approximately 25 key employees of ORIX and ORIX USA, Inc. ("ORIX USA"), required no capital contribution. The partnership allows Thompson (current President/CEO of ORIX USA, and CEO of ORIX, the principal subsidiary of ORIX USA), Weiner, Dinan and Wurst to share side by side with ORIX in, among other things, the profits realized by ORIX from its B-Piece Certificates, foreclosure fees, sale of foreclosed properties, and interest paid on monies advanced to the various Trusts. In addition, partners are permitted to invest additional pre-tax monies from their salaries and bonuses into the Partnership to increase their percentages interest therein. Every April 30, profits of the Partnership are distributed to the partners.

42. In addition to handsome salaries, ORIX paid Weiner, Dinan and Wurst very healthy bonuses. In 2003, Dinan and Wurst each received salaries of $150,000 and additional bonuses of $600,000. Upon information and belief, Weiner's salary and bonus were even larger. Wurst invested 60% of his compensation in the Partnership.

(2) How the Scams Work

a. First Scam (Buy Our "B-Pieces" or We Will Sue You)

43. The ORIX Conspirators target certain CMBS Trusts with the idea of purchasing the "B-Pieces." They conduct a thorough due diligence of the loans in the pool which includes reviewing files related to the loans in the Trust, reviewing and conducting site inspections for many of the loans, performing internal reviews of all transactional documents, contacting borrowers, etc. *See* attached Exhibits "B" and "Q." By the time the ORIX Conspirators make a

decision to purchase "B-Pieces," they are intimately familiar with many, if not most, of the loans in the pool and the risks involved in purchasing the pool's "B-Piece" Certificates.

44. All "B-Pieces" that the ORIX Conspirators purchase are bought at a "discount to coupon," for considerably less than face value and in amounts sufficient to enable them to constitute the pool's "Controlling Class," with its inherent right to appoint ORIX (themselves) as the Special Servicer for the Trust and dictate all Special Servicing actions.

45. As Special Servicer, the ORIX Conspirators demand all loan origination documents from the Depositors for all loans in the Trust's pool, regardless of the loans' performance. Conventional loan origination documents contain private and confidential information about the borrower, to which a servicer is not entitled. If the Depositors resist production, the ORIX Conspirators, threaten to initiate litigation in order to enforce the production of such documents in violation of the borrower's right to privacy.

46. Once the ORIX Conspirators obtain the loan origination documents, they scour them in search of technical defects such as rent roll discrepancies, pending local code violations, failure to obtain pool permits, failure to comply with handicap ordinances, or other routine management issues, which have nothing to do with the performance of the mortgage loan, but which the ORIX Conspirators argue to Depositors qualify as being "problem loans."

47. Thereafter, the ORIX Conspirators approach the Depositors alleging that certain loans contributed to the pool by the Depositor are problem loans because they contain technical breaches of warranties and misrepresentations. The ORIX conspirators suggest that the solution to the alleged problem loans is the Depositor purchase of ORIX Conspirator's "B-Pieces" at face value (not the substantially discounted rate ORIX paid). Alternatively, the ORIX Conspirators

request that the Depositor repurchase the loans it contributed to the trust pool. In the event of a refusal, the ORIX Conspirators threaten to sue the Depositor for such contrived misrepresentations and breaches of warranty, seeking repurchase of the loans, many of which are performing loans. If the Depositors refuse, the ORIX Conspirators file suit against the Depositor "on behalf of the Trust and Certificateholders," although the lawsuit cannot conceivably benefit the Trust or the Certificateholders.

48. A Depositor knows that where there is a determination of misrepresentations with respect to the loans it contributed, or where it repurchases loans, the Depositor would effectively be precluded from participating in future CMBS pools because its CMBS credibility and rating would be substantially compromised. Through "Rambo" litigation tactics, the ORIX Conspirators force the Depositors to expend huge sums of money to defend the frivolous lawsuit and risk their CMBS future, or bow to the extortion and settle out of court. ORIX enjoys the reputation of an "enforcer" and wants other Depositors to know that if they too refuse to purchase ORIX's "B-Pieces" they too will be subjected to the wrath of ORIX, whose official company motto is "Just Pay." The ORIX Conspirators employ a very aggressive and expensive style of litigation, often incurring needless litigation costs, all of which are ultimately paid by the Certificateholders. While ORIX may "advance" monies to cover the litigation expenses, the Trust repays all advances to ORIX *plus interest* before any distributions are made to the Certificateholders.

49. If a settlement is reached with the Depositors, "on behalf of the Trust," the "Settlement Proceeds" are rarely, if ever, enough to cover the "litigation costs" incurred by the ORIX Conspirators. Thus, the Trust and the Certificateholders never "win." Not only do the

Certificateholders never see a penny of the settlement proceeds, but they are assessed additional monies to make up for the ORIX Conspirator's scorched earth litigation tactics. Furthermore, the settlement proceeds are often paid directly to ORIX and placed in its operational account rather than to the Trust, although settlement monies are owed to the Trust and Certificateholders, not to ORIX.

50. Furthermore, even when Defendants obtain full payment of a foreclosed loan in the trusts – through settlement with a depositor or otherwise – Defendants will (1) represent in financial statements and tax returns regarding the Trust that the foreclosed loan is fully satisfied in order to obtain tax benefits; (2) simultaneously represent to the foreclosed borrower that the loan is not satisfied and attempt to gain double-recovery by seeking to foreclose and seize whatever other assets of the borrower (or guarantors) Defendants can find; (3) conceal the continuing litigation related to these liquidated loans from the Certificateholders while surreptitiously recovering the litigation fees plus interest from the trusts by falsely attributing the costs to other active loans; and (4) never truly credit the Trust for the payment of the Loan.

51. Defendants conduct with respect to the Lee Hall Properties is a prime example. To finance the investment in the Lee Hall Properties, Lee Hall, L.L.C. obtained a mortgage loan in the total amount of 17.4 million dollars ("Lee Hall Loan"). The Lee Hall Loan was part of a portfolio of mortgage loans contributed to the MLMI Trust. Lee Hall L.L.C. defaulted on the mortgage loan held by the Trust. Wells Fargo, in its capacity as Trustee, accelerated all debts owing, foreclosed on the loan, and sold the underlying properties. Wells Fargo further sued an alleged personal guarantor in a Virginia State Court and obtained a judgment against the putative guarantor for 6.62 million dollars.

52. During this time, Wells Fargo had an ongoing lawsuit with UBS wherein Wells Fargo claimed that UBS had misrepresented the quality of the loans it conveyed – including specifically the Lee Hall Loan. On September 17, 2004, Wells Fargo issued a notice announcing that UBS had agreed to reach a settlement with Wells Fargo and ORIX LLC, whereby UBS would pay an amount equal to $19.375 million to the Trust.

53. ORIX LLC, in its capacity as Master Servicer, issued a notice dated October 12, 2004 to the holders of the Certificates regarding the settlement payment received from UBS, which states that ORIX:

> has determined that the $19.375 million cash payment received by the Trust from or on behalf of the defendants in accordance with the terms of the Settlement Agreement (the "Settlement Payment") constitutes "Liquidation Payments" as that term is defined in the PSA; and further that such Liquidation Proceeds shall be treated as having been received in respect of the ["Lee Hall Loan"].

ORIX further claimed that it incurred litigation and other expenses in the amount of $5,928,863.08, leaving net liquidation proceeds equal to $13,446,136.92.

54. In the monthly report for October 2004, based on reports from ORIX and prepared by Wells Fargo Bank and delivered to Certificateholders, Wells Fargo reported a principal payment applied to the Lee Hall Loan in the amount of $10,503,553.71, reducing the loan balance to $4,275,000.00.

55. The December 2004 Wells Fargo report states a principal payment (from the sale of the subject property) applied to the Lee Hall Loan in the amount of $4,033,024.42, reducing the loan balance to zero, and classifying the Loan as a "liquidated loan" with a total realized loss of $241,975.58.

56. Such application would be proper under the PSA, which requires Wells Fargo to allocate the "Liquidation Proceeds" it received in settlement of its litigation against UBS in such a manner that would have resulted in the payment of interest and principal due on the Lee Hall Loan. Specifically, Section 3.02(b) of the PSA provides as follows:

> All amounts collected on any Mortgage Loan in the form of payments from Mortgagors, Insurance and Condemnation Proceeds or Liquidation Proceeds shall be applied to the amounts due and owing under the related Mortgage Note or Mortgage Notes and Mortgage (including, without limitation, for principal and accrued and unpaid interest) in accordance with the express provisions of each related Mortgage Note and the related Mortgage and, in the absence of such express provisions, shall be applied (after reimbursement to the Master Servicer, and the Trustee for any related Advances and interest thereon as provided herein): first, as a recovery of accrued and unpaid interest on such Mortgage Loan at the related Mortgage rate to but not including the Due Date in the Collection Period of receipt; second, as a recovery of principal of such Mortgage Loan to the extent of its entire unpaid principal balance; and third, in accordance with the Servicing Standard, as a recovery of any other amounts due and owing on such Mortgage Loan, including, without limitation, Prepayment Premiums, Penalty Charges and Additional Interest.

57. Indeed, in the January 2005 report (and subsequent reports) issued by Wells Fargo to the Certificateholders, the Lee Hall Loan no longer appears in the Mortgage Loan Detail, the Delinquency Loan Detail, or the Specially Serviced Loan Detail, but appears only on the Liquidated Loan Detail. In other words, since receipt of the Settlement Payment from UBS, the Trust has categorized the Lee Hall Loan as "liquidated."[2]

58. Nonetheless, despite its statement to the Certificateholders, and presumably the Internal Revenue Service to retain tax-exempt status under "REMIC" laws, that the Lee Hall Loan was satisfied and "liquidated," and despite the fact that Defendants actually received funds satisfying any amounts due on the Lee Hall Loan, Defendants continue litigation in Louisiana,

[2] Further, Defendant Dinan, officer and director of ORIX, has stated under oath that the settlement proceeds were in fact liquidation proceeds and were applied to the principal and interest of the Lee Hall Loan.

Virginia, and Israel in an attempt to collect additional funds from the alleged guarantor and his family. However, the Certificateholders have not been notified of these additional lawsuits, and, on information and belief, the expenses for these lawsuits are being falsely charged to the Trust against other active loans, including the "Arlington" loan discussed herein.

59. ORIX and Wells Fargo have received settlements of approximately $50 Million from lawsuits against various Depositors, including Bank of America, Lehmann Brothers and UBS Warberg. To this date none of this money has made it into their respective Trusts.

(b) Second Scam (Keep our "B-Pieces" Alive)

60. Again, this scam works only with respect to loan pools in which the ORIX Conspirators are the "Controlling Class." The ORIX Conspirators go through the loan origination documents targeting foreign or minority borrowers with high equity loans and scour said loans for technical defects. The Conspirators then obtain artificially low appraisals, known as "Broken Price Opinions," to understate the value of the mortgaged properties (despite knowing that their value is considerably more), and target the loans for foreclosure regardless of whether they are performing loans. The technical defects range from minor loan application errors or omissions to minor maintenance issues or disagreements with the servicer. The low appraisal value is yet another excuse to seize the borrower's property.

61. Thereafter, ORIX as Servicer sends the loan with such "engineered" and "technical" defects to ORIX for Special Serving, where all sorts of unauthorized (not authorized under the loan documents) "miscellaneous" fees and other charges are assessed monthly against the unsuspecting Borrower. When the Borrower complains, ORIX labels the fees and other

charges as a "mistake," and erases the overcharges from the monthly statement. Or so the Borrower is told. Only the ORIX Conspirators know that it is going to treat any failure to pay any fees or other charges assessed against the Borrower as an "event of default" within the loan's performance history.

62. In addition, instead of attempting to "workout" the loan and transfer it back to regular servicing, the ORIX Conspirators place unreasonable demands on the Borrower (such as a tenfold increase in the reserve for replacement payments), in order to ensure the Borrower's inability to cope with the mortgage payment, the added fees, and the outrageous additional reserve demands.

63. When the borrower is no longer able to cope with the added burdens imposed by the Special Servicer, the ORIX Conspirators initiate foreclosure proceedings on the property, ostensibly "*on behalf of the Trust and the Certificateholders*." More often than not, the ORIX Conspirators prevail due to foreigners' and minority borrowers' lack of understanding of the judicial system and their unwillingness or inability to spend huge amounts of money to adequately defend themselves.

64. After foreclosure, when the borrowers are no longer making payments on the loans, the ORIX Conspirators make "advances" to the Trust for those absent principal and interest payments. In addition, ORIX makes "servicing advances," which include legal fees spent by ORIX to pursue claims against the borrowers. All of these "advances," as well as the interest thereon, are ultimately re-paid by the Certificateholders. At the time of foreclosure, ORIX receives additional foreclosure related fees, in addition to all the other fees collected from the Certificateholders. On information and belief, Wells Fargo benefits from these improper

foreclosures by charging inflated and unexplained "expenses" to the Trust in connection with the foreclosures.

65. The ORIX Conspirators make all the foregoing "advances" to the Trust not for the benefit of the Trust or the other Certificateholders, but only in order to maintain their "Controlling Class" status within the Trust. This, in turn, entitles the ORIX Conspirators (1) to continue to receive interest payments on their "B-Piece" ("first loss") investments, which otherwise would have been "junked," (i.e., defaulted) but for the advances; and (2) to maintain its Special Servicer status (i.e., keep receiving servicing and special servicing fees), which in turn enables the ORIX Conspirators to maintain the right to approve special servicing actions, thus fueling its litigation expenses in furtherance of the First Scam.

66. The advances, for which the Trust and Certificateholders ultimately pay, are purely for the benefit of the ORIX Conspirators and, in fact, wholly detrimental to the interest of the Certificateholders and the Trust. In essence, ORIX is making advances to the Trust in order to enable the Trust to pay ORIX interest on ORIX's "B-Pieces," all at the expense of the Trust and other Certificateholders.

67. ORIX is a servicer of loans. According to its annual statement, ORIX services loan pools worth approximately 40 billion dollars. Assuming that ORIX acts exclusively as Special Servicer (and not also as Servicer) with respect to each and every loan, one would expect ORIX to generate annual revenues of $100 Million (Special Servicing Fee: .25% of $40 billion [value of the mortgaged pools]). Yet, according to ORIX's annual statement, ORIX made $1.2 Billion in 2004!

C. Significance of REMIC

68. As a rule, CMBS Certificates are "pass through Certificates," where the Trust has elected to be treated as a Real Estate Mortgage Investment Conduit ("REMIC") to enjoy the tax exempt status allowed under 15 U.S.C. §§806A-G. REMIC regulations impose very strict limitations as to the nature of the investments a REMIC trust may make (i.e. "permitted investments") and transactions which it may not undertake (i.e. "prohibited transactions"). Any violation of REMIC regulations has significant tax implications for the Trust, as well as all Certificateholders. For example, any income realized by the Trust from a "prohibited transaction" is taxed at 100%. The REMIC regulations also provide that any entity that causes the REMIC regulations to be violated is liable to the Trust and the Certificateholders for the entire amount of the tax.

69. Only income from "qualified mortgages" and "permitted investments" may enter a REMIC trust. A "qualified mortgage" is an obligation (i.e. mortgage) which is principally secured by an interest in real property which (1) was transferred to the Trust on the startup date, (2) was purchased by the REMIC Trust within 3 months after the startup date or (3) any qualified replacement mortgage.

70. Permitted investments are limited to:

a. Cash Flow Investments (i.e. temporary investment where the Trust holds money it has received from qualified mortgages pending distribution to the Certificateholders);

b. Qualified Reserve Assets (i.e. any *intangible* property which is held for investment and is part of a reasonably required reserve to provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow

investments. These investments are for very defined purposes and are to be passive in nature. They must be "reasonably required."

c. Liquidation Proceeds from "foreclosed property" which is acquired in connection with the default or imminent default of a "qualified mortgage" held by the Trust.

71. In order to maintain the REMIC status, the Trustee and the Servicers must ensure that the REMIC receives no income from any asset that is not a "Qualified Mortgage" or a "Permitted Investment." 26 U.S.C. § 806F(a)(2)(B).

72. Prohibited Transactions include the disposition of a qualified mortgage (except where the disposition is "incident to" the foreclosure, default, or imminent default of the mortgage); or the receipt of any income from an asset that is not a Qualified Mortgage or a Permitted Investment. 26 U.S.C. § 860F(a)(2)(B).

73. Prohibited Transactions are taxed in an amount 100% of the REMIC's net income from such prohibited transaction. 26 U.S.C. § 860F(a)(1).

74. Contributions of any "property" – e.g., cash, mortgages, etc. – made to the REMIC are taxed at 100% of the contribution, except for the four following exceptions:

a. Contributions to facilitate a "clean up call" (i.e. the redemption of a class of regular interest, when by reason of prior payments with respect to those interests the administrative costs associated with servicing that class outweigh the benefits of maintaining the class). Reg. § 1.860G-2(j)(1).

b. Any cash payment in the nature of a guarantee, such as payments to the REMIC under a surety bond, letter of credit or insurance policy.

c. Any cash contribution during the three month period after the start-up day; and

d. Any cash contribution to a qualified reserve fund made by a holder of a residual interest.

75. Any violation of REMIC regulations will defeat the privileged tax status and will subject the REMIC to 100% taxation, plus penalties and interest. These taxes and penalties are ultimately borne by the Certificateholders.

D. The Present Case

(a) The Merrill Lynch Mortgage Investment Trust ("MLMI Trust")

76. In 1999, Merrill Lynch Mortgage Investors, Inc. acted as the underwriter of certain CMBS known as "MLMI 1999-C1," ("MLMI") where UBS Warburg Securities, Inc. ("UBS"), Merrill Lynch, and ORIX were the three Depositors, ORIX acted as both Servicer and Special Servicer and Wells Fargo Bank Minnesota National Association ("Wells Fargo") served as the Trustee. The Trust elected to be treated as a "REMIC." The securities which are the subject of this lawsuit will be referred to as "MLMI." In the present case, the 10 year MLMI Certificates are all backed by 25 year commercial loans/mortgages, each with a balloon payment due at the end of 10 years, which coincides with the maturity of the Certificates. The Certificateholders receive monthly interest and principal payments on their investments.

77. On April 7, 2005, Plaintiff acquired 100,000 units of Class B MLMI Certificates valued at $112,000. Prior to such purchase, Plaintiff reviewed the Prospectus pertaining to these securities. See attached Exhibit "X." After the purchase, SFE had access to the PSA.

78. Also after the purchase of the MLMI Certificates, electronically distributed Distribution Reports became available to SFE. Specifically, on the 18th of every month, Wells Fargo electronically posts the Distribution Reports for the prior month. After SFE's purchase of the Certificates, Wells Fargo provided SFE a host of instructions and passwords to access the Distribution Reports. Wells Fargo provided SFE with a website (sinclair-rm1.norwest.com)

whose server, Norwest Technical Services NETBLK-NORWEST, is located in Minneapolis Minnesota (Norwest is Wells Fargo's predecessor).

79. On a monthly basis, Dinan, Wurst, Weiner and Thompson compiled, individually and in concert, oversaw and approved all the information contained in the Distribution Reports and electronically sent same to Wells Fargo. The data regarding the number of bankruptcies, aggregate Special Servicing Fees, and aggregate Trust Fund Expenses was routinely incomplete, false, and/or misleading.

80. The Distribution Reports are supposed to accurately reflect the "financial health of the trust," and provide Certificateholders, including SFE, with important data such as the number of loans in bankruptcy, the aggregate amount of special servicing fees, and the aggregate amounts of trust fund expenses. Each and every one of these categories is essential for SFE to assess its profit and loss potential in the MLMI Trust. Furthermore, this data is used by bond rating agencies to assess the value of the Certificates.

81. With respect to the MLMI Trust, the "Number of Loans in Bankruptcy" in the monthly Distribution Reports has never been accurately or completely reported. In April 2005, when SFE bought its Certificates therein, there were zero bankruptcies reported. After the Arlington debtor filed bankruptcy in June 2005, the bankruptcies as reported in the Distribution Reports remained at zero until December 2005. One bankruptcy appeared briefly on December 2005 and thereafter disappeared, not to show up again until April 2006. Bankruptcies do not get resolved in 30 days. The true number of bankruptcies in connection with the loan pool remains obfuscated, and Certficateholders and potential Certificateholders are left with the impression

that Trust is in better financial condition than is actually the case. This false, incomplete, and/or misleading reporting continues to date and will, in all likelihood, continue in the future.

82. In addition, the "Aggregate Trust Fund Expenses" and "Aggregate Amount of Special Servicing Fees" in the MLMI Trust have been routinely reported in the Distribution Reports in a manner that is incomplete, false, and/or misleading. In fact, the figures fluctuate wildly – without explanation – and do not provide accurate information about the actual total expenses and fees charged against the Trust. Again, the seemingly arbitrary "aggregate" amounts are reported in an incomplete, false, and/or misleading manner which, on information and belief, is designed to keep the true amounts from coming to light. For example, the amount of "Aggregate Trust Fund Expenses" in April 2005 was $13,846.13, in May $80.77, in July $88,373.88, in August $56,807.13 in November $1,133,804.62, and in December 2005 this "Aggregate Amount" dropped to $1,026,236. This incomplete, false, and/or misleading reporting continues to date and will, in all likelihood, continue in the future.

83. Similarly, the "Aggregate Amount of Special Servicing Fees" indicated in the MLMI Distribution Reports does not provide accurate information about the actual total or "aggregate" special servicing fees charged against the Trust, but is likewise an unexplainable and arbitrary figure. In April 2005, the "Aggregate Amount of Special Servicing Fees" was $107,076.59. The following month it was $19,113.51, and in June 2005 the "aggregate" drops further to $12,449.77. This incomplete, false, and/or misleading false reporting continues to date and will, in all likelihood, continue in the future.

84. On information and belief, the reporting of this incomplete, false, and/or misleading information was intentional and was designed by ORIX, ORIX USA, Dinan, Wurst

Weiner and Thompson to mask the true state of affairs, the bankruptcies, and the total amount of expenses paid to ORIX in order to make Certificateholders feel comfortable with, and hold on to, their investments. This, in turn, allows ORIX, ORIX USA, Dinan, Wurst, Weiner, Thompson and Wells Fargo to keep control of the Trusts and continue to make obscene profits at the expense of the Trusts and the Certificateholders. This incomplete, false, and/or misleading information was also designed, on information and belief, to inflate the value of ORIX's B-Pieces and increase the value of Dinan, Wurst, Weiner and Thompson's Partnership interest.

85. Given the positions of Dinan, Wurst, Weiner and Thompson, it is believed that the entries in the Distribution Reports were reviewed and blessed by these individuals prior to distribution to the Certificateholders. SFE relied upon the Distribution Reports in the evaluation of its investment.

86. SFE relied on the report of "zero" bankruptcies, thinking that if Arlington was the only bankruptcy, that the Trust was healthy. It has now learned that reports of bankruptcies in the pool are incomplete, false, and/or misleading. Likewise, SFE – who was not provided a clear picture of the actual expenses and fees charged to the Trust and relied on the incomplete, false, and/or misleading reports to believe that the total fees and expenses were much more modest than in reality – did not actually notice the extraordinary variances in the "Aggregate Amounts" until the "Aggregate Amount of Trust Expenses" was reported to be in excess of a million dollars in October 2005.

87. At that time, SFE started a comparison between the Distribution Reports in other months and discovered the additional anomalies, all designed to keep Certificateholders from ascertaining the true state of affairs. In fact, SFE discovered that the Distribution Reports have

contained incomplete, false, and/or misleading entries from virtually the inception of the Trust. SFE filed this lawsuit three months later.

88. The information and misinformation contained in the Distribution Reports is closely watched by bond rating agencies to determine the value of the Certificates. Excessive and unreliable Trust Expenses as well as excessive and unreliable Special Servicing Fees are red flags that signal poor financial health of the Trust. When the Trust expenses and Special Servicing fees increase, the market value of the Certificates decreases. The price of Certificates depends on the number of bankruptcies in the Trust, the Trustee Expenses, and the Servicing Fees. The purchase price of SFE's Certificates was inflated because of the false entries contained in the Distribution Reports.

89. The falsities, inaccuracies and/or omissions in the Distribution Report were also designed to deter Certificateholders from questioning the "Service Advances Outstanding" which, in turn, was designed to keep Certificateholders in the dark as to the actual amount of advances paid and to be reimbursed to the Servicer, solely to keep its B-pieces alive. By keeping the ORIX's B-pieces alive, Wells Fargo assured that its Trustee fee would not decrease.

90. As a seasoned servicer and special servicer, ORIX, ORIX USA, Dinan, Wurst, Weiner, and Thompson; as well as Wells Fargo, a seasoned trustee, all knew that disclosure of the true accounting and reporting of financials for the MLMI Trust would cause the price of the Certificates to drop. Wells Fargo and ORIX, ORIX USA, Dinan, Wurst, Weiner, and Thompson wanted to make Certificateholders feel comfortable with, and hold on to, their investments to allow Wells Fargo and the ORIX Conspirators to keep control of the Trusts and continue to make obscene profits at the expense of the Trusts and the Certificateholders. In

addition, it was designed to maintain the value of ORIX's B-Pieces, which could be sold by ORIX at a profit.

91. Unbeknownst to Plaintiff at the time it purchased its Certificates, the ORIX Conspirators had already purchased the entire MLMI K, J, and H Classes of Certificates, as well as portion of the G Class "first loss" "B-Pieces" with a total par value of $46,725,159 for the discounted price of $24,300,000. The Chart below shows the class of certificates purchased by ORIX, their par value, the percentage of par value actually paid by ORIX, their actual investment, in the B-Pieces, and the cumulative amounts of principal and interest paid on the "B-Pieces." For the lowest "B-Pieces" (K), ORIX apparently paid approximately 33 cents on the dollar.

Orix MLMI 6-Years Investment Summary

Revision 1, January 16, 2005

				Interest & Principal Distribution to B Rated Certificates Held by Orix & its Management							
Class	Par $	@ % Par	Orix Invest $	Month 1 Start	Month 12 Year 1	Month 24 Year 2	Month 36 Year 3	Month 48 Year 4	Month 60 Year 5	Month 72 Year 6	Cumulative Principals
G	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
H	20,735,000	58.51%	12,000,000	138,235.55	1,735,[illegible].09	3,275,451.13	4,877,613.82	[illegible]	[illegible]	5,516,192.55	7,230,971.20
J	[illegible]	[illegible]	1,300,000	19,755.55	255,132.96	466,053.39	696,969.10	[illegible]	[illegible]	[illegible]	[illegible]
K	[illegible]	33.03%	[illegible]	88,867.75	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total Investment			$24,300,000			Total Returns in 72 Months				21,444,865.10	16,294,938.58

92. The purchase of ORIX's "B-Pieces" in the various trusts were always investigated and approved at various corporate levels. Specifically, the purchases were recommended by Weiner, Thompson, C.E.O., and Yoshio Ono ("Ono"), a board member. *See* attached Exhibit "B" at OCM273651-57.

93. As per ORIX's and Wells Fargo's records, the aggregate principal amount of unpaid loans in the MLMI pool was $591 Million at the inception of the Trust. In other words, the principal amount of loans in the pool at its inception was $591 Million. *See* Exhibit "C." According to the Trust's Distribution Reports, borrowers are collectively making payments of approximately $250,000 per month toward the principal amount. Given that all of the loans in the pool are amortized over 25 years, the principal paid each month is a very small percentage of the monthly payment made by the borrower. Thus, without any foreclosures, the aggregate principal amount of unpaid loans would have decreased by approximately 18 Million dollars over the last 6 years ($250,000/month x 6 years = $18,000,000). Once a performing loan is foreclosed upon, the borrower stops making principal and interest payments, which only hurts the Trust and the Certificateholders.

94. Currently, the aggregate amount of unpaid principal is approximately $472 Million, which means that the Trust's principal amount of all unpaid loans in the pool has actually decreased $101 Million dollars in the last six years – over and above any reductions attributable to loan payments ($591M - $472M - $18 M = $101) – all due to the Dinan, Wurst, Weiner, and Thompson's acts and business plan, which included foreclosing on performing loans and initiating needless litigation. *See* Exhibit "D." On information and belief, this improper reduction of the principal amount of all unpaid loans in the pool has and will result in the Trust and Certificateholders' loss of principal repayments totaling many tens of millions of dollars.

95. Dinan, Wurst, Weiner and Thompson, in the course and scope of their employment for ORIX (and Thompson, in the scope of his employment for ORIX USA, as well) were responsible for deciding which and how many loans in the MLMI pool were transferred

from Servicing to Special Servicing. Of 106 loans in the Trust Pool, Dinan, Wurst, Weiner and Thompson transferred 20 loans to Special Servicing (19% percent of the Pool). Four of said loans (representing 9.3% of the value of all outstanding loans) were transferred to special servicing after SFE purchased its Certificates.

96. In addition, Dinan, Wurst, Weiner and Thompson, in the course and scope of their employment for ORIX (and Thompson, in the scope of his employment for ORIX USA, as well) were responsible for deciding when and against whom to foreclose; what advances to make to the Trust; who to sue; how to characterize settlement proceeds; the compilation of the data in the Distribution Reports; what information or disinformation would go into the Distribution Reports. On information and belief, any false or fraudulent statement contained in the Distribution Reports had the blessing of each one of the individual defendants.

97. ORIX has a duty to attempt to work out non-performing loans prior to foreclosure. ORIX, Dinan, Wurst, Weiner and Thompson, however, foreclosed on *performing loans.* For example, with respect to the Arlington Apartment loan, a performing loan, when the borrower refused to sign an additional document allowing ORIX to charge it additional "fees," Henry Bomar, an ORIX employee promised the borrower ORIX would foreclose on the loan. Dinan, Wurst, Weiner and Thompson devised a scheme to foreclose on the property. First they obtained a bogus $3.2 million non-MAI appraisal of the property and then used the appraisal as a basis for initiating foreclosure proceedings on a property whose value they knew exceeded the remaining loan balance. After foreclosure, the property sold for over twice the amount of the bogus appraisal. The debtor is now in bankruptcy.

98. ORIX's and Wells Fargo's contrived and reckless foreclosures and defaults have eliminated 19 mortgage loans representing approximately $101 Million loss of principal to be distributed among the Certificateholders. Given these losses, all of the ORIX Conspirators' $46,276,159 first loss "B-Pieces" should have been "junked." On information and belief, they have not been junked because ORIX continues to make "Principal and Interest" advances to the Trust, which the Trust ultimately repays to ORIX, in order that (1) ORIX's "B-Pieces" be paid principal and interest and (2) so that ORIX can maintain its "Controlling Class" status and collect fees.

99. ORIX's payment of principal and interest advances to the Trust in order to pay its "B-Pieces" is nothing more than a pyramid scheme, devised and carried out by Dinan, Wurst, Weiner and Thompson. As long as ORIX keeps making the advances, no one is the wiser. To date, ORIX's initial $24,300,000 investment in MLMI "B-Pieces" investment has received monthly principal and interest payments totaling $37,739,591.68. ORIX has already realized an approximate 155% return, or a 55% profit on its investment, and it continues to receive monthly payments.

100. In addition, unbeknownst to Plaintiff, on information and belief, ORIX had created a secret partnership where key ORIX employees such as Defendants Thompson, Weiner, Wurst and Dinan were given an interest (the "Partnership"). These same employees made decisions on behalf of ORIX as (1) Servicer, (2) Special Servicer, (3) "B-Piece" Certificateholder, (4) Fiduciaries to the other Certificateholders, and (5) the Trustee's agent and attorney- in-fact. Despite the inherent conflict of interests, and the duties set forth in Section 3.01(a) of the PSA, on information and belief, these key employees were given such an interest

in the Partnership that most of their compensation hinged entirely on ORIX's revenues. On further information and belief, this scheme was designed by the ORIX Defendants to entice Thompson, Weiner, Wurst and Dinan to maximize the profits of ORIX, even if it meant violating their fiduciary duty to all other Certificateholders.

101. ORIX is paid a fee of 0.06199% of the loans it services and 0.25% of all loans in special servicing. Thus, ORIX is paid four times as much in fees for loans in "special servicing!" On information and belief, every time a loan was transferred from "servicing" to "special servicing," Thompson, Weiner, Wurst and Dinan would make money because their compensation would rise along with the inflated fees.

102. Each seizure and foreclosure potentially nets ORIX millions of dollars because on top of the fee, the ORIX Conspirators also appropriate the cash flow of the seized property. After ORIX foreclosed on the Arlington Apartments, approximately $362,609 in rental payments was made to ORIX. Based upon information and belief, this amount never made it to the Trust. *See* Exhibit "E." Every time a performing loan was foreclosed, on information and belief, Thompson, Weiner, Wurst and Dinan made money as ORIX was paid a separate foreclosure fee in addition to its servicing fees. In addition, on information and belief, the Trustee also charged additional fees upon each foreclosure, which explains why Wells Fargo has "looked the other way" as the Certificateholders were cheated out of performing loans.

103. The Partnership is the reason why the ORIX Conspirators obtain artificially low appraisals on the targeted properties. After doing so, the ORIX Conspirators initiate foreclosure proceedings alleging that the property owner has failed to maintain the property. After the property is seized, ORIX appoints a Management Company ("Keeper") who allows the property

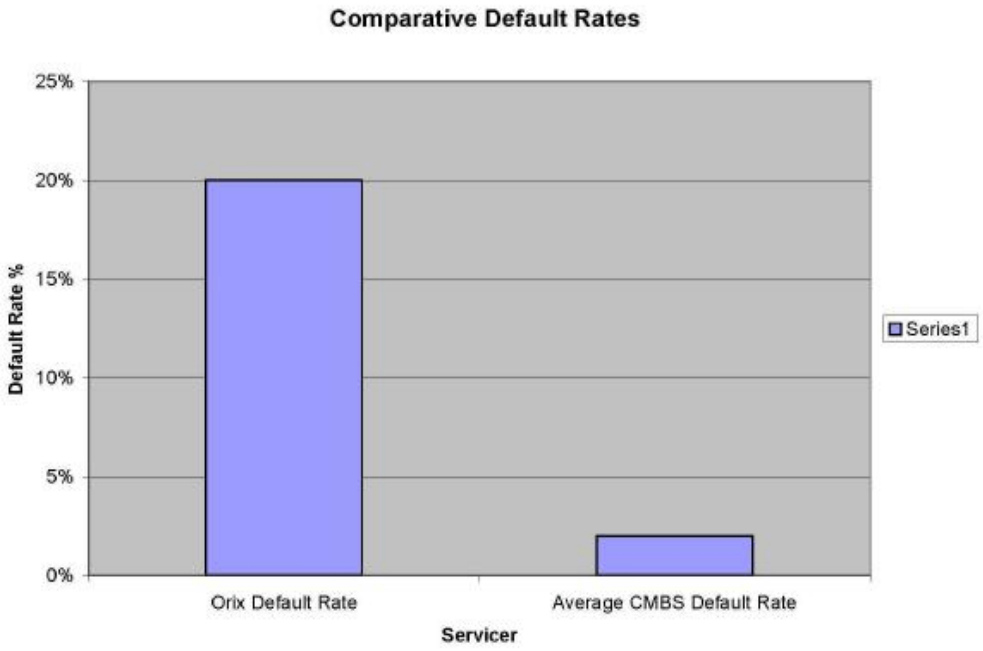
to deteriorate in order to discourage other bidders at the sheriff's auction, and allows ORIX to obtain the property at a depressed price. Every time a foreclosed property was purchased by ORIX and subsequently sold at a profit, on information and belief, Thompson, Weiner, Wurst and Dinan made money. This is exactly what happened with the Colonial Court Apartments (part of the Lee Hall Portfolio), which ORIX bought for $900,000 at the foreclosure sale, and subsequently sold for $2.7 Million for a profit of $1.8 Million at the expense of the Trust and the Certificateholders.

104. Every time ORIX "advanced" money to the Trust to pay interest on its "B-Pieces," on information and belief, Thompson, Weiner, Wurst and Dinan make money through their Partnership interests. Every time ORIX receives "interest" on any advances it makes to the Trust, on information and belief, Thompson, Weiner, Wurst and Dinan make money.

105. The ORIX Conspirators never disclosed the existence of the Partnership or the identity of the partners. Plaintiffs never knew that the persons who were going to be making decisions with respect to their investments had a direct financial interest to act contrary to the interests of the Certificateholders in many such decisions. This failure to disclose is particularly glaring given that Thompson, Weiner, Wurst and Dinan are all seasoned attorneys aware of the conflict of interest presented by the Partnership. On information and belief, the secret ORIX Partnership was in existence at the time Plaintiff purchased its certificates. Had Plaintiff known of its existence, Plaintiff would never have purchased its certificates.

106. The industry average for loans sent to Special Servicing due to a default within a given CMBS pool is 2%. Currently, of the 106 loans in the MLMI pool, as Servicer ORIX has transferred 19 "defaulted" loans (20% of the loans in the pool) to ORIX as Special Servicer.

Why? Because, ORIX can make four times the fees for servicing the same loans by merely transferring them from "servicing" to "special servicing."



107. As Special Servicer ORIX has foreclosed on at least fifteen (15) loans in the pool, of which at least ten (10) were making their monthly interest and principal payments. At least four of the foreclosures occurred after SFE's purchased its Certificates.

108. While one would expect ORIX's fees as "Servicer" to decrease as more loans are transferred to "Special Servicing," such is not the case. In fact, both have increased (see chart below).

109. According to the sworn testimony of Robert Pettinato, Jr. ("Pettinato"), in mid to late 2002, Jim Thompson, Cliff Weiner and Michael Wurst, on at least two separate occasions requested that UBS purchase the ORIX Conspirators' MLMI "B-Pieces," as well as those of another Trust, known as the PMAC. The ORIX Conspirators demanded that UBS purchase all

of ORIX's "B-Pieces" at par value (a 300% profit to ORIX) to avoid future repurchase litigation. *See* attached Exhibit "H" at 3-6, 12-15, 24-27 and attached Exhibit "I" at 76-83**.**

110. On one occasion, Thompson traveled to Atlantic City, New Jersey, to meet with UBS's Brian Harris, to advise Harris that UBS had committed fraud in the securitization of the MLMI Trust, but that ORIX as special servicer would not make an issue of the fraud if UBS agreed to purchase ORIX's MLMI B-Pieces. Harris answered that if there was in fact fraud, which Harris doubted, Harris and UBS wanted to know and would, in fact disclose the fraud. Despite knowing that both he [Thompson] and ORIX owed a fiduciary duty to the Certificateholders, Thompson suggested that disclosure would not be necessary, provided UBS purchased the B-Pieces. When Harris questioned whether Thompson was enticing him [Harris] to "cover up the fraud," Thompson merely shrugged his shoulders and smiled**.** *See* attached Exhibit "J" at 30. During that same meeting, Thompson threatened that absent purchase of ORIX's B-pieces, loan repurchase litigation as well as federal securities claims would ensue. *See* Exhibit "J," p. 19-32.

111. On another occasion, Weiner and Wurst made similar threats over the telephone to UBS's Pettinato and Bob Garner ("Garner"). In both instances, Wurst and Weiner demanded that UBS purchase ORIX's "B-pieces" at par value or be faced with a lawsuit to be brought by ORIX on behalf of the Trust. Wurst even boasted that such litigation would "shut down" UBS's business, as UBS would not be able to withstand the internal scrutiny in the industry.

112. In response to Wurst and Weiner's threats, Pettinato explained that, if there were in fact problems with some of the loans in the Trusts, UBS's purchase of the B-Pieces would not solve any of the problems of which they were complaining. If the loans were bad, purchasing

ORIX's "B-Piece" would not benefit any of the senior Certificateholders, it would merely put a lot of money in ORIX's pockets.

113. Wurst, Weiner and Thompson's threats were nothing but an attempted extortion of nearly $50 million from UBS at the expense of the Certificateholders in the MLMI Trust. The face value of the MLMI "B-Pieces" that the ORIX Conspirators had purchased for a little over $24 Million was exactly $46,726,159. To date, ORIX has recovered most, if not all, of its initial investment of $24.3 million through distributions over the last six (6) years "B-Pieces." In addition to these distributions, the ORIX Conspirators have received additional millions in repayment of "advances" it has made to the Trust, which are repaid to it by the Trusts with interest.

114. After UBS refused to purchase ORIX's "B-Pieces," Wurst suggested and requested that UBS re-purchase somewhere between 20 to 50 loans which had been "hand picked" by ORIX, ORIX USA, Dinan, Wurst, Weiner and Thompson. None of the "hand picked" loans were truly "problem loans." *See* attached Exhibit "K" at 210.

115. According to Wurst, the repurchase was to be a "win/win" for all. UBS would profit because the selected loans were high coupon loans, and paid a higher interest rate than the prevailing interest rates being paid in the market. Thus, Wurst explained, "UBS could resell each and every one of the loans at a profit." The ORIX Conspirators would benefit from the loan repurchase because, as holders of B pieces purchased at a substantial discount, immediate full payment of the loans' principal amounts through repurchase would represent a huge profit with respect to those loans. However, the holders of "higher' pieces – who purchased the Certificates at a premium – would be guaranteed a loss on their investment with respect to those loans

because their ability to earn interest over time is eradicated. Thus, under Wurst's proposal, UBS and the ORIX Conspirators were to benefit to the detriment of all other Certificateholders.

116. Pettinato's deposition testimony explains that if the underlying mortgage loans which Wurst requested that UBS repurchase, carried a premium, then so did the certificates in the REMIC Trust, i.e., they are worth more than par value because of the high coupon on the underlying loans. As Pettinato testified: "If loans were bought out of the trust at a hundred cents on the dollar, and that money was in turn paid to the bondholder, that hundred cents, for what that bondholder might have 110 cents in value, that bondholder just lost ten cents, or ten dollars, or ten million dollars, whatever the magnitude of the repurchase was. And we were not prepared to do that to the investors of those securitization [MLMI and PMAC]. And, that's why we thought it was improper." *See* Exhibit "H" at 24-27. If ORIX was able to cause UBS to repurchase these loans at 100 cents on the dollar, ORIX would have a tremendous windfall profit in its *B-Piece Certificates* which it had purchased at deeply discounted rates. Clearly, Dinan, Wurst, Weiner and Thompson had little, if any, regard for the fiduciary duties they owed to all the Certificateholders. They were more interested in their portion of the Partnership profits.

117. When UBS refused to cave into ORIX's demands, ORIX filed two lawsuits (later consolidated) against UBS Warburg regarding the MLMI Trust. Cause No. 02-10700-B *ORIX Capital Markets, LLC v. UBS Warburg Real Estate Securities, Inc. et al,* In County Court at Law No. 2, Dallas County, Texas filed on September 3, 2002 (the "Warranties Lawsuit"), alleged breaches of warranties and representations in the Mortgage Loan Purchase Agreement ("MLPA"). Cause No. 02-02849 *ORIX Capital Markets, LLC et al. v. UBS Warburg Real Estate Securities, Inc. et al.*, In the 192nd Judicial District Court, Dallas County, Texas, filed on March

23, 2002 (the "Document Lawsuit") alleged failure to deliver certain documents to ORIX allegedly required under the MLPA.

118. When UBS filed a motion to abate the Warranties Lawsuit, pending the outcome of the Document Lawsuit, ORIX argued that the two lawsuits were distinct and different and even admitted that it filed the Warranty Lawsuit primarily on its own behalf as a Certificateholder. ORIX's response to the motion to abate stated:

> ORIX brings four claims. ORIX brings one claim on behalf of the Trust, that Defendants breached certain warranties contained in the Mortgage Loan Purchase Agreement.....ORIX brings three claims in its individual capacity as a purchaser of Certificates in the offer and sale by Defendants. ORIX claims that Defendants made material misrepresentations or omissions in the MLPA, and also in the Certificate's offering documents. Defendants' misrepresentations and omissions give rise to claims for fraud, negligent misrepresentation, and violation of the Texas Security Act, for which ORIX seeks to . . . recover damages for its investment in the Certificates.

See attached Exhibit "V" at 2-3, 5. It is thus clear that three quarters (¾) of all claims in the Warranty Lawsuit were being made on ORIX's behalf in its capacity as a B-piece Certificateholder and not the other Certificateholders in the Trust. ORIX, therefore, should have paid ¾ of the litigation expenses! In fact, the Trust paid for all litigation expenses as noted in the following:

Distribution of Liquidation Proceeds

Collateral ID:		8	
Annex A ID		PW 8703	
Primary Servicer Loan Number		296000030	
	Liquidation Proceeds		$ 19,375,000.00
	Recovery of Advances and interest thereon		
less	P&I Advance		869,160.00
less	Servicing Advances		4,643,417.74
	Litigation expenses	4,351,998.25	
	Other Servicing Advances	291,519.49	
less	Interest at the Reimbursement Rate		316,277.31
	To Servicer - Recovery of Advances and interest thereon		5,828,855.05
	Available Distribution Amount		13,546,144.95
	Accrued and unpaid interest on such Mortgage Loan at the related Mortgage Rate to but not including the Due Date in the Collection		
less	Period of receipt		2,842,503.21
less	Recovery of principal of such Mortgage Loan		10,503,553.71
	Remaining Liquidation Proceeds		0.00

Cumulative Litigation Expenses (to date)	7,819,738.80
Current Recovery of Litigation Expenses (from interest recoveries)	2,647,795.69
Current Recovery of Litigation Expenses (from Proceeds)	4,351,998.25
Outstanding Litigation Expenses	820,044.86

The litigation expenses in the UBS case were no less than $7,819,738.80. ORIX owes the Trust its share totaling $5,864,803, which has not been re-paid, to date.

119. In the two lawsuits, ORIX had alleged that 33 out of the 36 loans that UBS contributed to the MLMI Trust contained breaches of warranties. However, after the Certificateholders incurred millions of dollars in legal expenses to pursue the ORIX conspirator's quest to increase the value of their "B-Pieces," ORIX dismissed its claims against UBS with respect to all but 9 of the loans, 6 of which were *performing* loans! This is especially appalling, given Thompson's testimony that he is unaware of any other servicer in the industry who requests the repurchase of performing loans. *See* Exhibit "J" at 81.

120. Wells Fargo, as Trustee, allowed ORIX's blatant self dealing because it profited from the scam. The Trustee had, at the very least, the duty to advise all Certificateholders that

ORIX was pursuing claims of its own, which may well be adverse to the interests of other Certificateholders. Furthermore, to reimburse ORIX's expenses incurred in litigation brought in ORIX's own behalf with Trust monies is inexcusable for a Trustee. It demonstrates that Wells Fargo has breached its duty as a Trustee. Testimony given by Wurst on May 24, 2004 confirms that he and Barry Swartz (Wells Fargo Trust Department) had "some" verbal agreement outside of the PSA regarding the payment of legal expenses. *See* Exhibit "P" at 138-140.

121. It is important to note that a REMIC Trust cannot sell or repurchase a "qualified mortgage" unless it is under imminent threat of foreclosure, without losing its tax-free status. Despite their knowledge of REMIC rules and regulations, a sale of qualified mortgages that were not even in default is exactly what Thompson, Weiner, Wurst and Dinan proposed to UBS. Obviously, Thompson, Weiner, Wurst and Dinan evidenced no regard for the interests of the Trust or the other Certificateholders when they made such a proposal.

122. Under the threat of losing a favorable rating and not participating as a Depositor in future securitizations, UBS settled with the MLMI Trust and the PMAC Trust for $19.375 Million and $9 Million, respectively. Although ORIX had sued *on behalf of the Trustee* in the UBS Lawsuit, the settlement monies were paid directly to ORIX and not the Trust.

123. Based upon information and belief, ORIX has developed a litigation strategy where all costs associated with its Special Servicing are categorized as "legal expenses" and are, therefore, completely reimbursed by the Trust. This is contrary to the PSA's requirement that ORIX pay all expenses incurred by ORIX in connection with its Special Servicing activities. Wells Fargo, an experienced Trustee, knows or should know this is improper.

124. Since ORIX has been the master and special servicer, the ORIX Conspirators have made "advances" to the MLMI Trust in the amount of approximately $161 Million. The sole purpose of these "advances" was to (1) maintain their "Controlling Class Interest" in the Trust, thus permitting them to remain as Special Servicer and collect Special Servicing Fees, including foreclosure fees and interest on reserves for replacements paid by borrowers; (2) assure themselves payment of monthly interest and principal on their "B-Piece" investments in the Trust; and (3) have unlimited access to an intimidating litigation war chest.

125. The PSA grants the Special Servicer the right to make advances to the Trust for shortfalls in principal and interest only in contemplation of circumstances where loan payments from borrowers are a few days late, or where the scheduled payment dates are due after the date the Servicer is to make monthly interest distributions to Certificateholders. The right to make advances to the Trust is not given as a means for self dealing and enrichment at the expense of the other Certificateholders. Wells Fargo, as Trustee, knows this, and yet approved such advances anyway.

126. As of December 2005, the available distribution amount collected (i.e., the amount collected from loans in one month, less expenses) has been reduced from $6,210,426 in January 2002, to a mere $3,578,454. See attached Exhibit "M." Yet, despite the diminishing funds, the ORIX Conspirators's "B-Pieces" received interest each month in the amount of $350,000 due entirely to the ORIX Conspirators' "advances." Where there are insufficient funds from borrowers to pay the interest on the "B-Pieces," the PSA provides that they are to be "junked" and the next lowest rated Certificates become the Controlling Class. Without the

"Keep Our B-Pieces Alive" advances, there would not be sufficient monies to pay many of the senior Certificateholders, much less the "B-Piece" holders.

127. Given the extraordinary number of foreclosures and the monthly Distribution Reports' revelation that the amount available for distribution to the Certificateholders is approximately one half of the original amount, the ORIX Conspirator's first loss "B-Pieces" should have been defaulted (i.e. "junked") long ago. Instead, the Conspirators have devised a scheme whereby they "advance" monies to the Trust, so that they can pay themselves and, in this manner, the ORIX Conspirators have converted their "first loss" "B-Pieces" into a "first profit" investment.

128. ORIX has not made any type of 10-k disclosures to the Securities and Exchange Commission since 2001. Despite its claims and demands against the depositors that many of the loans were "problem loans" and the atypically high number of foreclosures and special servicing of ORIX handled loans as compared the industry, ORIX has not made any significant amendments, revisions, or additional reports to its S.E.C. disclosures.

129. Another example of Dinan, Wurst, Weiner and Thompson's abuse of power is the counterclaim ORIX filed in this litigation. The counterclaim, which will bring no benefit to the MLMI Trust, is also brought "on behalf of the Certificateholders" for no other purpose that to charge the Trust with the litigation expenses. Wells Fargo has not filed any pleadings against the ORIX Conspirators and, in fact, has aligned itself with ORIX in this litigation.

130. After the purchase of its Certificates, SFE had access to the PSAs in both Trusts. Under the term of the PSAs, (§ 3.01(a)) the Servicer and Special Servicer,

> shall diligently service the Mortgage Loans . . . with the same care, skill, prudence and diligence with which the Master Servicer or Special Servicer . . . (1) services

> and administers similar mortgage loans for other third-party portfolios, giving due consideration to the customary and usual standards of practice of prudent institutional, commercial, ... lenders servicing their own mortgage loans, or (2) services and administers commercial, . . . mortgage loans owned by the Master Servicer or Special Servicer, as the case may be, whichever standard is higher, and with a view to the maximization of timely recovery of principal and interest on a present value basis on the Mortgaged Loans or Specially Serviced Mortgage Loans, as applicable, and the best interest of the Trust and the Certificateholders, notwithstanding:
>
> > (i) any relationship that the Master Servicer or the Special Servicer, as the case may be, or any Affiliate hereof may have with the related Mortgagor, a Mortgage Loan Seller (including, without limitation, any Mortgage Loan Seller's repurchase obligation), or any other party to this Agreement;
> >
> > (ii) the ownership of any Certificate by the Master Servicer or the Special servicer, as the case may be, or any affiliate thereof
> >
> > (iii) the Master Servicer's or Special Servicer's, as the case may be, right to receive compensation for its services hereunder or with respect to any particular transaction; and
> >
> > (iv) the Master Servicer's or Special Servicer's, as the case may be, owning or managing any other mortgage loans or mortgaged properties for third parties (the foregoing, collectively referred to as the "Servicing Standard").

131. Dinan, Wurst, Weiner and Thompson, ORIX and ORIX USA failed to meet the servicing standard they set for themselves under the PSAs. One of Wells Fargo's duties, as Trustee, is to assure compliance with all REMIC regulations for the benefit of the Certificateholders. This Wells Fargo has not done.

132. ORIX, Dinan, Wurst, Weiner, Thompson, and Wells Fargo caused REMIC violations when, in order not to share with the debtors the proceeds from the 19.375 million dollar settlement of the UBS Warberg lawsuit, ORIX and Wells Fargo represented to a court in Houston, that the proceeds were the result of a breach of contract action (and not "liquidation

proceeds") unrelated to the debtor's plight. Breach of contract proceeds, as per REMIC regulations, are "prohibited income" to the Trust. Prohibited income destroys the "pass through" tax exempt status of the Trust and causes the payments to Certificateholders to be taxed at 100%.

133. Given that the Certificateholders were advised that the settlement proceeds were "liquidation proceeds," SFE has repeatedly attempted to confirm that the UBS settlement monies were indeed "liquidation proceeds" and not prohibited income (contract settlement) in order to avoid penalties and interest on its MLMI investment.

134. The Trust's treatment of the UBS settlement will necessarily be recorded in the Trust's 1066 income tax return. Despite SFE's repeated requests of Wells Fargo for such information, Wells Fargo adamantly refuses to disclose how the Trust accounted for the UBS settlement monies to the IRS.

(b) The First Union Commercial Mortgage Securities, Inc. Trust (the "FULBBA Trust")

135. The FULBBA is a $3.2 billion Trust.

136. In 1998, Wachovia Bank, National Association sold certain multifamily and commercial mortgage loans, totaling in excess of $1.3 billion to First Union Commercial Mortgage Securities, Inc. ("First Union") who in turn deposited the loans into the FULBBA 1998-C2 ("FULBBA") pursuant to a Prospectus and a PSA, where Wells Fargo acted as Trustee, First Union as the initial Servicer and Criimi Mae Services, L.P. ("Criimi Mae") as the initial Special Servicer.

137. On July 28, 2005, Plaintiff purchased 50,000 units of Class A-2 FULBBA Certificates for $52,700; the current market value of the Certificates is $42,9000. Prior to such purchase, Plaintiff reviewed the Prospectus and, after the purchase, it reviewed the PSA.

138. On October 30, 1998, ORIX purchased the Special Servicing rights from Criimi Mae, and immediately subcontracted same back to Criimi Mae. ORIX had no interest in acting as a Special Servicer, at the time, because it had yet to purchase a controlling interest in the "B-Pieces" of the FULBBA Trust.

139. Unbeknownst to Plaintiff, in April 2000, after approximately four (4) months of extensive due diligence, which included reviewing First Union and Criimi Mae's files relating to the loans, all internal transaction documents, and conducting legal reviews of representations and warranties, ORIX purchased the "B-Pieces" Class G (BB), Class H (BB-), Class J (B+), Class K (B), Class L (B-), Class M (CCC) and Class N (First Loss) ("the Bonds") in the FULBBA Trust from Lehman Brothers at a significant discount. Lehman Brothers had previously purchased these same shares from Criime Mae, Inc., the debtor in possession in a Chapter 11 Bankruptcy proceeding bearing Case Nos. 98-2-3115 (DK) through 98-2-3117 (DK) in the United States Bankruptcy Court for the District of Maryland. *See* attached Exhibit "Q" at OCM-FU-S00004035-4054. Lehman and ORIX had worked out their deal prior to Lehman's acquisition of the Bonds in the Bankruptcy court). According to ORIX's internal documents, its motive for Lehman's role in the bankruptcy bond purchase was

> To conceal our [ORIX's] interest in these transactions, ORECM [ORIX] is negotiating with CRIIMI MAE through Lehman; effectively hiding behind Lehman to convince CRIIMI MAE that Lehman is the only buyer. ORECM intends to surface at the appropriate time as purchaser of FULBBA 98-C2 CMBS.

See Exhibit "P" at 00003934.

140. Shortly after Lehman purchased the Bonds, it sold them to ORIX. ORIX purports to have spent $142,000,000 for the purchase of the Bonds. It apparently paid $46,795,0004.15 in cash as evidenced by the wire transfer report dated April 20, 2000 and ORIX's own General

Ledger entries on April 19, 2000 (*See* Exhibit "Q" at 00003995-96), with Lehman financing the remaining amount.

141. Before making the decision to purchase the Bonds, ORIX and ORIX USA undertook an extensive due diligence. ORIX's due diligence yielded such comments as:

> Based on the data gathered in the site inspection process, the collateral pool is considered to be above average in real estate quality compared to other conduit transactions issued from 1998 to 1999. In general the assets were located in good markets and properties were in good condition. No material amount of deferred maintenance was noted. . . .
>
> The FULBBA 98-C2 transaction has performed well since issuance with few delinquent loans and no losses. . . .
>
> ORECM's final due diligence sample for full re-underwriting consists of 356 loans totaling approximately $2.3 billion or 68% of the collateral pool. . . .
>
> ORECM is the Special Servicer for this transaction and is currently negotiation with First Union National Bank to acquire the Master Servicing. Acting as Master and Special Servicer will allow ORECM *full access to borrower and property information* as well as control over all loan modifications and resolutions."

See Exhibit "Q" at 00003918, 00003925-26.

142. At no time during its four month due diligence did ORIX request the loan origination documents or any "internal credit analysis" from First Union or anyone else.

143. The Bond purchase had to be approved by various persons and entities within the ORIX Group. Any investment over $30 million had to be approved by H. Harada at ORIX Group in Japan, who at the time was in charge of the credit departments for all companies consisting of the ORIX Group. *See* Exhibit "Q" at 00003968-70. David Mouse, a member of ORIX's Board of Directors, approved the purchase and remarked: "Good transaction and good pricing: We should make a lot of money." *See* Exhibit "Q" at 00003971. Fellow board member Yoshio Ono (also chairman of ORIX, USA) similarly remarked, "[a]s a result of due diligence,

we note that the loans in the collateral pool are secured by relatively good properties." *See* Exhibit "Q" at 00003972-75. Fellow board member John Moss (also President and CEO of ORIX USA) commented "Unique situation enables ORECM potential significant returns." *See* Exhibit "Q" at 00003973-75.

144. On or about April 20, 2000, ORIX purchased the Bonds from Lehman Brothers and became the Trust's "Controlling Class." In June 2000, completing its business plan, ORIX purchased the Master Servicing rights to the FULBBA Trust from First Union and became the Servicer. Shortly thereafter, ORIX terminated its sub-servicing agreement with Criimi Mae Servicing Limited Partnership and installed itself as Special Servicer of the FULBBA Trust. ORIX now had control of the Trust.

145. Immediately after becoming both Servicer and Special Servicer, and the owner of the Bonds, ORIX began its campaign to improve the value of its B-pieces at the expense of the other Certificateholders. On July 5, 2000, ORIX requested that First Union either cure "Document Defects" or repurchase the loans it had contributed to the FULBBA Trust "at the applicable Purchase Price. . . . [p]lease contact Mr. Clifford M. Weiner of this office in order to arrange for the requisite transfer of funds and loan documentation in connection with your repurchase of the Loans." *See* attached Exhibit "R" at OCM-FU-00388464. In July 2000, all of the loans in the Trust were performing loans, as ORIX's own due diligence completed two months earlier had confirmed. FULBBA's Distribution Report Summaries also confirm that there were no foreclosures on any of the loans as of July 2000. *See* attached Exhibit "S."

146. Prior to ORIX becoming Servicer and Special Servicer, the Trust had no foreclosures and all Certificateholders were getting paid in accordance with their investment.

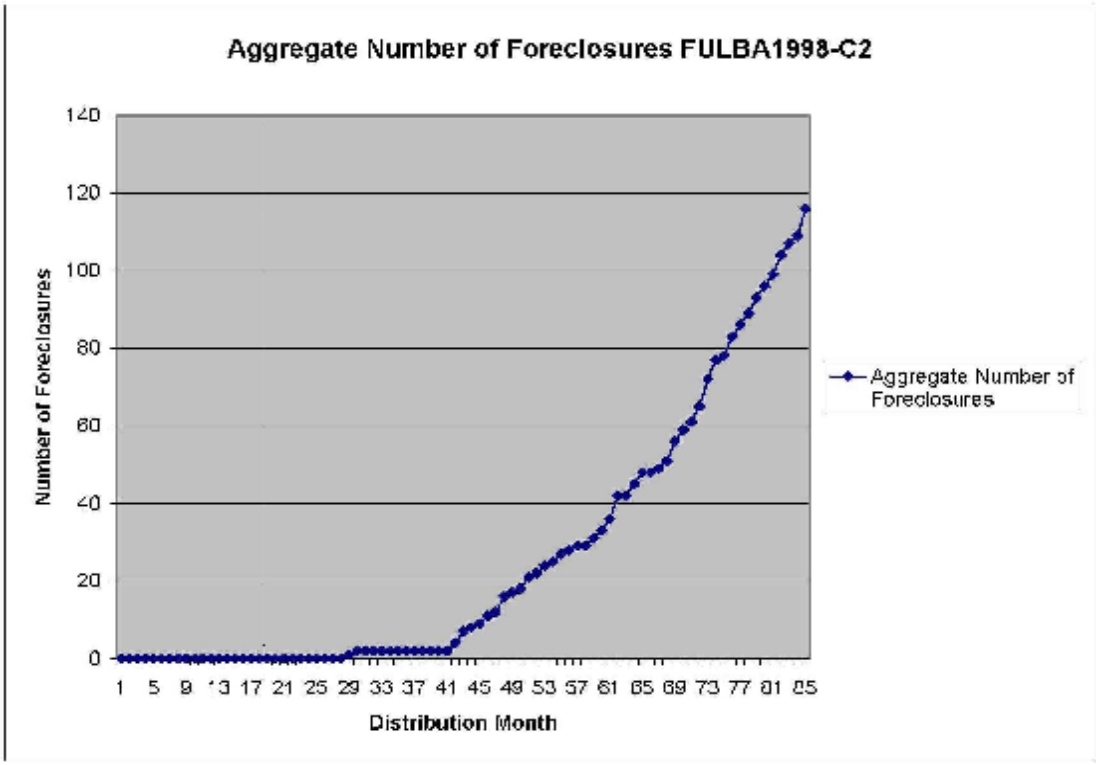
One need only look to ORIX's internal documents which clearly set forth its plan to improve the value of its B Pieces and market them at the expense of other Certificateholders. On February 9, 2000, ORIX USA Board Member David E. Mundell, recommended the purchase of the B piece bonds from Lehman and remarked "[l]arge well followed transaction that will have good liquidity...could hold for long time or sell off BB soon." *See* Exhibit "Q" at 00003977. On information and belief, ORIX, Dinan, Wurst, Weiner and Thompson's motives for becoming and carrying out the duties and responsibilities of Servicer and Special Servicer were to act in their own interest (i.e. position its own B-pieces for sale and profit) regardless of the harm caused to the other Certificateholders.

147. As Special Servicer, in March of 2002 (after creation of the Partnership), ORIX again requested that First Union produce certain loan origination documents for all the loans that First Union had contributed to the FULBBA Trust. The motive for the request would soon become apparent, and it had nothing to do with servicing the loans or protecting the interests of the Certificateholders in the Trust. Just as in the UBS Lawsuit, ORIX wanted the loan origination documents to scour them for possible "misrepresentations" in order to support its demand that First Union repurchase certain loans in the pool at a significant profit to ORIX. All despite the adverse effect the demand would have on the other Certificateholders.

148. In January 1999, the Aggregate Unpaid Principal Balance of the Loans in the Trust (i.e. the amount of principal the borrowers owed the trust) was $3,383,487,734. Given that the underlying loans have a maturity of 25 years, the amount of principal repaid to the Trust by the borrowers is less than $4 million a month. Thus, one would anticipate that the Aggregate Unpaid Principal Balance of the Loans as reported in the Trust's Distribution Report Summary to

be reduced by approximately $3.5 million to $4 million a month. Eighteen months later, on June 2000, when ORIX took over as servicer of the loans, the Aggregate Unpaid Balance was in fact right on schedule with $3,321,382,930. The February 2006 Distribution Report Summary reflects an Aggregate Unpaid Principal Balance of Loans in the FULBBA Trust of $ 2,399,119,503. At most, assuming principal is repaid at $4 million a month, the Aggregate Unpaid Principal Balance of the Trust should not be reduced by more than $340 million from the original amount on January 1999. (85 months x $4 million/mo. = $340 million.) In fact, according to the Distribution Reports, the amount of principal payments which the Trust can possibly recoup as of February 2006 from the outstanding borrowers is nearly $660 million less than it should be.

149. The reduction in unpaid principal occurred because, after taking over as Servicer and Special Servicer, the ORIX Conspirators foreclosed on 123 of the 664 loans in the FULBBA pool, the vast majority of which were performing loans. Thirty eight (38) of these foreclosures occurred after SFE purchased its Certificates.



In the foregoing chart, the vertical line represents the point in time when ORIX became Special Servicer and, in essence, assumed control of the Trust.

150. In accordance with their self-dealing scam, ORIX, Dinan, Wurst, Weiner and Thompson set out to execute their contrived foreclosure campaign to line their pockets with Special Servicing and foreclosures fees, while making advances to the Trust to keep their "B-Pieces" alive, at the expense of the Trust and Certificateholders. After ORIX became Special Servicer, the number of loans in Special Servicer increased exponentially, and so did the number of foreclosures.

151. Given the extraordinary losses (in excess of $650 million dollars) sustained by the Trust, ORIX's B-piece investments, which had a combined par value of $289,684,239, should

have been defaulted. In fact, many of the tranches more senior to ORIX's G, H, J, K, M and N Classes of Certificates should also have been defaulted if a true "waterfall" applied to the Trusts.

152. Not only have ORIX's B-Piece investments in the Trust not been defaulted, ORIX is still receiving its full coupon rate of monthly interest and principal payments. ORIX accomplishes this feat by making advances to the Trust, so that it can pay itself interest and principal on its B-pieces, and then obtaining repayment of those advances from the Trust. In the words of John Dinan, ORIX takes money from one pocket (advances to the Trust) and puts it in the other pocket (monthly interest payments from the Trust to ORIX). *See* attached Exhibit T. What Dinan did not say, however, is that ORIX also gets repayment plus interest on all advances to the Trust. To date, ORIX has advanced well over $180 million to the Trust, which it gets back, with interest, before any Certificateholder gets paid. Since April of 2000, ORIX has been able to obtain improper payments from the FULBBA Trust (i.e. return of principal and interest) in excess of $80,000,000 on its B-piece certificates.

153. On August 7, 2002, Dinan, Wurst, Weiner and Thompson decided to sue Wachovia Bank, N.A. f/k/a First Union Nation Bank for money damages, allegedly on behalf of the FULBBA Trust, for allegedly breaching its contractual duty to deliver loan origination documents under the MLPA and PSA. ORIX ultimately identified only two (2) loans, out of a pool of 664, for which it alleged losses related to missing documents and four (4) loans for which it alleged increases in servicing fees. The case was tried in federal district court in Dallas in February and March 2005. After a bench trial, the court found that Wachovia failed to deliver documents as contractually required, but that ORIX had suffered no damages as a result thereof. ORIX spent $7.3 million prosecuting a frivolous case, allegedly on behalf of the

Certificateholders, when in fact the suit was truly brought against Wachovia for its failure to repurchase certain loans pursuant to ORIX's "Business Plan." *See* attached Exhibit "R." Thus far, the FULBBA Trust has reimbursed ORIX $4.1 million for litigation expenses. *See* attached Exhibit "U."

154. Given the extraordinary losses sustained by the FULBBA Trust, ORIX re-securitized and sold its FULBBA B-pieces while retaining their voting rights so as to remain the Trust's Servicer and Special Servicer. In its Offering Memorandum for Multi Asset Securitization Trust, ORIX for the first time acknowledges "Certain Conflicts of Interest" between the servicer and the Certificateholder. *See* attached Exhibit "U" at 13.

155. The value of Plaintiff's certificates was greatly diminished due to ORIX's and Wells Fargo's egregious and ongoing breaches of contractual and fiduciary obligations as the "Special Servicer" and "Trustee," respectively.

156. As Special Servicer, ORIX has engaged, and continues to engage, in a wasteful, baseless and self-serving campaign of litigation designed only to further its own financial interests at the expense of all other investors in the FULBBA Trust. As a result, ORIX has caused all other holders of beneficial interests in the Trusts to suffer substantial shortfalls in their interest payments from the fund and downgrades in the credit ratings of their certificates. As Trustee, Wells Fargo has known of the malfeasance of ORIX and has elected to "look the other way" provided monies keep entering the coffers of Wells Fargo in the form of Trustee Fees, which are $0.0012% per anuum of the Aggregate Amount of the loans in the pool, and the value of the Master Servicing Rights continues to grow. The Certificateholders will continue to suffer these losses if ORIX and Wells Fargo are allowed to continue on their wrongful path.

157. The Distribution Reports Wells Fargo electronically provided to SFE and Certificateholders in the FULBBA Trust all over the United States originated in Minnesota and were retrieved by SFE in Texas. The FULBBA Distribution Reports also contain incomplete and/or false entries designed to mislead Certificateholders as to the true activities and "health" of the Trust. ORIX, Dinan, Wurst, Weiner and Thompson electronically sent to Wells Fargo the incomplete, false, and/or misleading data to be contained in the Distribution Reports for electronic distribution to the Certificateholders.

158. Specifically, the reported "Aggregate Trust Fund Expenses" and "Aggregate Amount of Servicing Fee" were reported each month to SFE and the other Certificateholders in an incomplete, false, and/or misleading manner which would lead a reasonable investor to believe that the reports reflected a total amount of fees and expenses, when the reports may actually have only reflected a partial total, the totals for a single month, or some other arbitrary figure. For example, the "Aggregate Amount of Servicing Fee," in the July, 2005 Distribution Report was $94,838.94; the following month, the Aggregate amount was $33,590.27. In the October 2005 Distribution Report the "Aggregate Amount of Servicing Fee," was $76,312.92; the following month it was $48,809.48 and in the December Distribution Report it fell even lower, it was reported to be $34,005.14. This incomplete, false, and/or misleading reporting continues to date and will, in all likelihood, continue in the future.

159. The "Aggregate Trust Fund Expenses" were also reported to SFE and the other Certificateholders in an incomplete, false, and/or misleading fashion. For example, in the August 2005 Distribution Report indicates the "Aggregate Trust Fund Expenses" to be $200,103.27; the following month the Aggregate number was reduced to $180,664.20. In the

November 2005 Distribution Report, the "Aggregate Trust Fund Expenses" was $202,681.93; the following month reduced to $176,134.13, a figure lower than the Aggregate amount reported in the August Distribution Report. This incomplete, false, and/or misleading reporting continues to date and will, in all likelihood, continue in the future.

160. The information and misinformation contained in the Distribution Reports is closely watched by bond rating agencies that determine the value of the Certificates. Excessive and unreliable trustee expenses, as well as excessive and unreliable special servicer fees are red flags that signal poor financial health. When the Trust expenses and Special Servicing fees increase, the market value of the Certificates decreases. The price of Certificates is also affected by the number of bankruptcies in the Trust. The price SFE paid for its Certificates was inflated because of the false entries contained in the Distribution Reports.

161. The falsities in the Distribution Report were also designed to deter Certificateholders from questioning the "Service Advances Outstanding," which in turn was designed to keep Certificateholders in the dark as to the actual amount of advances to be reimbursed to the Servicer for keeping its B-pieces alive.

162. Given the positions of Dinan, Wurst, Weiner and Thompson, it is believed that all entries in the Distribution Reports were reviewed and blessed by these individuals prior to distribution to the Certificateholders. SFE relied upon the Distribution Reports in the evaluation of its investment.

163. Dinan was in charge of Special Servicing for the Trusts on behalf of ORIX and ORIX USA. As Director of Special Servicing, Dinan (along with Wurst) decided which loans were transferred to Special Servicing, which loans were foreclosed upon, litigation tactics,

amounts of advances to be made to the Trusts, handling characterization of settlement proceeds, and reported data such as the number of bankruptcies, aggregate amount of servicing expenses, number of loans in foreclosure, and Trustee expenses. Dinan was intimately involved in the compilation of the Trusts' Distribution Reports forwarded to Wells Fargo for distribution to the Certificateholders.

164. Wurst was the former Director of Distress and Proprietary Assets for ORIX. He was specifically responsible for the management and overseeing of all Specially Serviced Loans and foreclosed upon properties for both Trusts. Wurst was intimately involved in the compilation of the Trusts' Distribution Reports forwarded to Wells Fargo for distribution to the Certificateholders.

165. Dinan and Wurst report to Weiner, who is the managing director of ORIX Capital Markets Real Estate Group and responsible for overseeing of all Trust portfolios in which ORIX is a Certificateholder, including the two Trusts in question herein. Weiner reports to Thompson, Chairman and CEO of ORIX. Weiner and Thompson approved which loans were transferred to Special Servicing, which loans to foreclose upon, litigation tactics, amounts of advances made to the Trusts, handling and characterizing of settlement proceeds, and reported data such as the number of bankruptcies, aggregate amount of servicing expenses, number of loans in foreclosure, and Trustee expenses. Weiner and Thompson also were intimately involved in the compilation of the Trusts' Distribution Reports forwarded to Wells Fargo for distribution to the Certificateholders.

(c) Wells Fargo's Involvement

166. Wells Fargo executed Limited Powers of Attorney making ORIX its agent and attorney- in- fact with respect to the management and administration of the mortgage loans and related properties in the Trusts. Consequently, any misconduct by ORIX, ORIX USA, Dinan, Wurst, Weiner and Thompson is imputed to Wells Fargo.

167. Specifically, the Limited Power of Attorney executed on or about February 2, 2000, in the MLMI Trust stated in pertinent part:

> NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION (Wells Fargo), as Trustee ("Trustee") under that certain Pooling and Servicing Agreement dated as of November 1, 1999 (the "Agreement") . . . relating to Merrill Lynch Mortgage Investors, Inc., Mortgage Pass-Through Certificates, Series 1999-C1, hereby makes, constitutes and appoints ORIX Real Estate Capital Markets, LLC . . . (herein, "ORECEM") . . . acting as the true and lawful agent and attorney-in-fact of Trustee, to take any or all actions incident to or in connection with ORECM's management or administration of the Mortgage Loans, Mortgaged Properties and REO Property (as such terms are defined and contained the Agreement), in its capacities as Master Servicer and/or Special Servicer (consistent with the servicing standards and duties of ORECM under the Agreement), and any and all matters incident or related to those assets . . . .

168. Furthermore, Wells Fargo, in executing the Powers of Attorney for Wells Fargo, attempted to disclaim all liability for ORIX's wrongdoings in the servicing of the mortgage loans. If allowed to disclaim all liability in exchange for making ORIX its agent and attorney-in-fact, Wells Fargo will have sold the Certificateholders down the river. This a Trustee cannot do, especially when it is profiting from ORIX, Dinan, Wurst, Weiner and Thompson's malfeasance.

169. Wells Fargo's fee as Trustee is a percentage of the total value of the mortgages in the Trusts; thus, ORIX's advances to keep its B-Pieces alive serve Wells Fargo's self interest as it keeps up the level of its Trustee Fee.

170. The "Duties of the Trustee" set forth in the Prospectus state

> "... upon receipt of any of the various certificates, *reports or other instruments* required to be furnished to it [the Trustee] pursuant to the Pooling Agreement, the *Trustee will be required to examine* such documents and to determine whether they conform to the requirements of the Pooling Agreement."

See attached Exhibit "Y" at 67.

171. Under the Prospectus, Wells Fargo clearly has a duty to examine the Trusts' distributions summaries (i.e., Distribution Reports) "to determine whether they conform to the requirements of the Pooling Agreement." As part of its duties, Wells Fargo is required to send the Distribution Reports to the Certificateholders. One of the entries in the monthly Distribution Reports is the number of loans that are in foreclosure. The "Aggregate Number of Foreclosures" from the inception (Nov. 1998) of the FULBBA Trust through the date when ORIX became Special Servicer (June 2002) were modest, averaging approximately 1 foreclosure per year. As of February 2006, after four years under ORIX's "rampage" as special servicer, the number of foreclosed loans rose to 123 (average: 30+ foreclosures per year). The national CMBS foreclosure average is less than 2% per year. Where a Trustee is required to examine such Distribution Reports and fails to notice, much less question, that over 20% of the loans are in foreclosure, the Trustee is not performing its duties.

172. If Wells Fargo had examined the report at all, it would have noted that 20% of the loans were in foreclosure and the "first loss" B pieces are still getting paid, month after month, thanks to advances made by the Servicer (ORIX), who also "happens" to be the owner of the B pieces. Under these circumstances, the advances plainly would never be recovered from the

designated cash flow of the Trust[3]. Clearly, ORIX was not complying with the PSA or REMIC regulations.

173. Where 20% of the loans are in foreclosure, the first and second tranches of B pieces should have been defaulted and "junked" long ago. Wells Fargo's acquiescence in such abuses cannot be said to be "in the performance of its duties." Wells Fargo allowed the abuses to continue in order keep up its Trustee fee.

174. Wells Fargo has already judicially admitted that it abdicated all of its responsibilities regarding any foreclosure decision. Wells Fargo asserts that the Trustee is not involved in this process at all; the Special Servicer decides whether a loan will be foreclosed and gives notice of the determination to the Trustee (Wells Fargo's Mot. to Dismiss Brief, p. 9). Wells Fargo's cavalier attitude towards its statutory duty is even more offensive given ORIX's propensity to foreclose on performing loans as well, all to the detriment of the Certificateholders.

175. In addition to the Prospectus, § 126 of New York's Property Law imposes on the Trustee a duty to act pursuant to the "prudent person" standard in connection with decisions to remedy any default, which would include ORIX's violation of the Servicing Standard and the relevant PSAs. Section 126 specifically imposes a "prudent person" standard with respect to the decisions to accelerate and foreclose on mortgages in the Trust pool. Instead of upholding that standard, Wells Fargo simply received the notice of ORIX's self-serving determination and failed to consider whether or not the foreclosure was "prudent under the circumstances." Such is not the conduct of a prudent man in the conduct of its own affairs. Thus, in connection with the

[3] It must be kept in mind that all advances are repaid to ORIX from the Trust funds plus interest. After ORIX foreclosed on the Arlington loan (a performing loan in the MLMI Trust), ORIX made $425,000.00 in interest alone on ORIX's advances to the Trust to avoid junking ORIX's B pieces.

decision as to whether or not to foreclose on any defaulted or performing loan, among other ways, Wells Fargo failed to live up to the "prudent man" standard.

176. The real reason it knowingly condoned the activities of the ORIX, Dinan, Wurst, Weiner and Thompson at the expense of the Certificateholders is that Wells Fargo "booked" "Master Servicing Rights" ("MSRs") as a $12,511,000,000 intangible asset. *See* attached Exhibit "W." Based on information and belief, Wells Fargo issued additional stock or stock options to their President and CEO, Kovacevich, and to other key employees who were aware of the ORIX Conspirator's schemes, which stock and options increased in value as the MSRs increased the value of Wells Fargo. Kovacevich's income and stock option bonus for the year 2004 totaled $50 Million dollars. *See* attached Exhibit "N."

177. Plaintiff has repeatedly advised Wells Fargo of its concerns regarding ORIX's conduct and the mismanagement of the Trust. The Trustee never produced any information or documents in response to Tom Arjmandi, SFE's President's, inquiries, or corrected the misinformation in the Distribution Reports. On information and belief, because of Wells Fargo's complicity and participation in the scheme, any efforts by SFE or any number of other Certificateholders to demand or prompt Wells Fargo to take action or bring suit to stop improper actions of the master and special servicer would be unnecessary and futile, and would only result in greater continuing damages to SFE and to the Trusts. Likewise, any procedures providing Wells Fargo time to consider potential claims and allowing it to use its discretion to decide whether to act against itself and the master and special servicer, as well as any mechanisms to indemnify Wells Fargo for taking any action against the ORIX Defendants or the KeyCorp

Defendants, would be unnecessary and unconscionable, and would only result in greater continuing damages to SFE and the Trusts.

178. Month after month Wells Fargo electronically distributed to SFE and to all Certificateholders in the MLMI and FULBBA Trusts misinformation designed to keep Certificateholders from questioning the "financial health" of the Trusts so as to allow Wells Fargo to continue maximizing the fees it charged.

179. Wells Fargo breached its fiduciary duty towards the Certificateholders by (1) allowing and condoning the actions of the ORIX conspirators, (2) actively participating in the distribution of false information to the Certificateholders, and (3) benefiting itself at the expense of the Certificateholders.

180. When convenient, Wells Fargo attempts to distance itself from the decisions made by ORIX on behalf of the Trust, but Wells Fargo, as Trustee, is ultimately responsible for overseeing the conduct of ORIX to determine if it is in compliance with its duties under the PSA. In fact, Wells Fargo does have a manual that deals with risk management in its trust business. According to Michael G. Lugger, Wells Fargo's "Policies and Procedures" is a compilation of information used by Wells Fargo to manage its corporate trust business. The Policies and Procedures reflect, among other things, Well's Fargo decisions on how *best to manage for risk*, how to *administer and control* trust appointments and the level of oversight and control appropriate to the business. *See* attached Exhibit "O."

(d) KeyCorp's Involvement

181. In December 2005, KeyCorp[4] purchased ORIX from ORIX USA in an effort to expand KeyCorp Real Estate, the mortgage servicing subsidiary of KeyCorp.

182. Upon information and belief, as part of the purchase, the KeyCorp Defendants obtained all of ORIX's master servicing contracts and obligations and most of ORIX's special servicing contracts and obligations, including those related to the MLMI and FULBBA Trusts.

183. On further information and belief, after a 90-day transitional period following the purchase, KeyCorp Real Estate became the Master and Special Servicer for the MLMI and FULBBA Trusts, as indicated by the April 2006 report issued to the Certificateholders for those Trusts. SFE confirmed that KeyCorp Real Estate became the Master and Special Servicer of the MLMI and FULBBA Trusts through email inquiries to both KeyCorp and Wells Fargo. Upon further information, KeyCorp Real Estate acquired ORIX's infrastructure and information systems, retained most of ORIX's employees, set up shop in ORIX's Dallas offices at 1717 Main Street, Suite 900, Dallas, Texas 75201, and has continued to employ the self-serving tactics those same employees used when ORIX was their employer.

184. In July 2006, the reports from the MLMI and FULBBA Trusts were suddenly changed to state that, while KeyCorp Real Estate was the Master Servicer, ORIX was the Special Servicer for those Trusts. However, all special servicing reports related to the Trusts

[4] KeyCorp is the parent holding company in a consolidated financial and banking entity consisting of KeyCorp and numerous subsidiaries, including KeyCorp Real Estate. KeyBank, N.A. is the lead bank in the KeyCorp group and KeyBank Real Estate Capital is the real estate lending arm of KeyBank, N.A. The name KeyBank is often used interchangeably in the public with KeyCorp, although it is only a component of the KeyCorp group. Similarly, the name KeyBank Real Estate Capital is sometimes used interchangeably in the public with KeyCorp Real Estate, although KeyCorp Real Estate is the entity which assumed ORIX's Master and/or Special Servicing role in connection with the MLMI and FULBBA Trusts, as discussed herein. KeyCorp and KeyCorp Real Estate are sometimes collectively referred to herein as the "KeyCorp Defendants."

since April 2006, including those purportedly provided by ORIX, bear the name KeyCorp on the report attachments and indicate that they were created by KeyCorp software.

185. In any event, after April 2006, KeyCorp Real Estate became directly involved in the Master and/or Special Servicing of the MLMI and FULBBA Trusts. These Trusts were administered either by (a) KeyCorp Real Estate as Master and Special Servicer or (b) KeyCorp Real Estate as Master Servicer and ORIX as Special Servicer with the substantial assistance or involvement of KeyCorp Real Estate.

186. On information and belief, many of the "scams" and improper servicing of the loans in the MLMI and FULBBA Trust pools have continued since the KeyCorp Defendants became involved in the Master and/or Special Servicing of the Trusts, including but not limited to:

a. improper principal and interest advances in violation of the Servicing Standard and the controlling PSAs (i) to loans that have been certified as non-recoverable and (ii) for amounts far in excess of the advances authorized under the PSAs. This includes an inexplicable $750,000 in principal and interest advances for the month of August 2006 – as reflected in the master servicing report for that month sent to MLMI Certificateholders – made in connection with the Arlington loan discussed herein, a loan which was certified as non-recoverable and for which a monthly principal and interest payment would be a mere fraction of that amount. These advances are made to generate additional unnecessary servicing fees and repayment of interest advances plus interest on loans that should be "junked" for the benefit of the Certificateholders;

b. maintaining expensive litigation, funded from the Trusts and concealed

from the Certificateholders, in connection with loans that (i) are performing or (ii) have been satisfied and liquidated – such as the Lee Hall Loan discussed herein – to obtain a double-recovery for the sole benefit of the Master and Special Servicer. This pattern is merely a continuation of the "scorched earth" litigation tactics described herein that benefit the Master and Special Servicer at the expense of the Certificateholders; and

c. incomplete and false monthly reports to the Certificateholders since April 2006, including reports which falsely state the number of loans in foreclosure, reflect use of improper non-MAI appraisals of the property, represent that certain loans are in master servicing while special servicing fees are still being generated with respect to those loans, and omit required detailed reports that would allow Certificateholders to discover the improper and fraudulent activities of the Master and Special Servicer.

IV. DAMAGES

187. The MLMI Trust paid ORIX litigation expenses in the amount of $7,819,738 in connection with the UBS Warburg lawsuit. Three out of the four causes of action in that lawsuit were brought by ORIX in its own behalf as a Certificateholder. ORIX cannot bill the Trust for its own litigation expenses. The MLMI Trust, therefore, is entitled to recover all, and Plaintiff is entitled to its share, of the $5,864,480 in litigation expenses (three quarters of the total reported litigation expenses) which ORIX over-billed the MLMI Trust.

188. To date, the FULBBA Trust has reimbursed ORIX $4.1 million dollars in litigation expenses for the prosecution of the case against Wachovia Bank, for which ORIX was unable to prove any damages on behalf of the Trust. The FULBBA Trust, therefore, is entitled to

recover all, and Plaintiff is entitled to its share, of the $4.1 million litigation expenses incurred in the frivolous suit against Wachovia.

189. To date, the ORIX Conspirators (and the KeyCorp Defendants since April 2006) have improperly advanced millions of dollars to the MLMI and FULBBA Trust funds in the exclusive furtherance of their own interests and to the detriment of the Trust and the other Certificateholders. The Trusts have already reimbursed a substantial part of said sum to ORIX and the KeyCorp Defendants, with interest. The MLMI and FULBBA Trusts, therefore, are entitled to recover all, and Plaintiff is entitled to its proportionate share, of such reimbursement.

190. Plaintiff invested $112,000 in Certificates in the MLMI Trust, and $52,700 in the FULBBA Trust. Given the potential tax liabilities, Plaintiff's Certificates are now virtually worthless. The Trustee, the only person with knowledge as to whether the Certificates are "virtually" or "actually" worthless, will not disclose the information. Furthermore, Plaintiff cannot sell its Certificates without full disclosure of the conduct of the Defendants as described above. If Plaintiff does not make a full disclosure of all facts to any prospective purchaser, Plaintiff may well have violated securities laws and regulations, as have the Defendants.

191. In addition, although the ORIX Conspirators' "B-Pieces" should have been "junked" long ago, the ORIX Conspirators received in excess of $350,000 of the Trusts' funds each month. The MLMI and FULBBA Trust, therefore, is entitled to recover all, and Plaintiff is entitled of its proportional share, of the principal and interest payments made to the "B-Pieces" after the date on which such certificates should have been "junked."

192. Through improper advances to the MLMI and FULBBA Trust, and at the expense of other Certificateholders, ORIX kept its B-Pieces alive, increased their value, and sold the

Certificates for a profit in excess of $20 million dollars. As a fiduciary, ORIX should be forced to disgorge any gains realized from the breach of its fiduciary obligations. The MLMI and FULBBA Trusts, therefore, are entitled to recover all, and Plaintiff is entitled to reimbursement of its proportionate share, of the increase in value of ORIX's "B-Pieces" and of any profits ORIX realized out of the sale of its B-pieces in either or both of the MLMI and FULBBA Trusts.

193. Since ORIX took over as Servicer and Special Servicer of the MLMI and FULBBA Trusts, ORIX and Wells Fargo have foreclosed on numerous loans and reduced the Aggregate Unpaid Principal Balance of Loans (i.e. monies available to pay back all Certificateholders' principal) by over $650 million dollars. The MLMI and FULBBA Trusts, therefore, are entitled to recover all, and Plaintiff is entitled its share, of amounts lost to the Trust as a result of the performing loans which were foreclosed by ORIX with Wells Fargo's blessing. The MLMI and FULBBA Trusts, are also entitled to recover all, and Plaintiff is further entitled to its share, of losses to the Trusts as a result of any performing loans that were foreclosed by the KeyCorp Defendants.

194. Further, ORIX has realized additional profits from its scheme to improperly foreclose on performing loans by reselling foreclosed properties to itself or entities with which ORIX has an affiliation. ORIX should be forced to disgorge any such realized gains, including all profits realized upon resale of properties that were foreclosed and purchased out of the MLMI or FULBBA Trusts by ORIX or entities with which ORIX had an affiliation. Any similar gains by the KeyCorp Defendants from improper foreclosure should likewise be disgorged. Plaintiff is likewise entitled to reimbursement of its share of these ill-gotten profits.

195. All Special Servicing Fees paid to ORIX (and the KeyCorp Defendants since April 2006) in the MLMI (in excess of $2 .1 Million) and FULBBA Trusts.

196. Disgorgement of all of the fees paid to Wells Fargo in both the MLMI and FULBBA Trusts and all of Wells Fargo's profits from the Trusts.

197. The value of Wells Fargo's "Master Servicing Right" asset noted in its 2005 Annual Report, attributable to the MLMI and FULBBA Trusts (0.0004 x $12.511 billion = $5,004,400).

VII. CAUSES OF ACTION

A. Breach of Fiduciary Duty

198. Paragraphs 1 through 197 are incorporated herein by reference and for all purposes as if set out in full. The conduct of ORIX, ORIX USA, Dinan, Wurst, Weiner, Thompson, Wells Fargo, KeyCorp, and KeyCorp Real Estate as outlined above, amounts to a breach of the fiduciary duty each of them owed to both Trusts and to the Certificateholders of both Trusts.

199. Under the PSA, ORIX and the KeyCorp Defendants since April 2006 agreed to assume the duties and responsibilities of Servicer and Special Servicer and to do so in accordance to the Servicing Standard and for the benefit of the Certificateholders, such as SFE. In addition, ORIX and the KeyCorp Defendants since April 2006 assumed the duties of the Trustee when acting as agent and attorney-in-fact for the Trustee.

200. A formal fiduciary relationship arises as a matter of law between the KeyCorp Defendants, ORIX, Dinan, Wurst, Weiner and Thompson, on the one hand, and the Trusts and

Certificateholders, on the other hand, in the former's capacity as Servicer and Special Servicer, and as attorney-in-fact for the Trustee.

201. ORIX, ORIX USA, Dinan, Wurst, Weiner, and Thompson breached the Servicing Standard as well as their fiduciary, good faith and fair dealing, and/or reasonable care duties by, among other things:

a. acting in their own economic self-interest to the detriment of the Certificateholders, such as SFE;

b. making servicing decisions as investors rather than as an independent servicer;

c. initiating and pursuing litigation that could only benefit ORIX, ORIX USA, Dinan, Wurst, Weiner, and Thompson at the expense of the Certificateholders, such as SFE;

d. tendering performing loans or loans for which there is no projected loss for repurchase;

e. demanding that loans be repurchased without a prior determination as to whether any of the alleged defaults had a material and adverse effect on any of the referenced loans;

f. settling the repurchase loan litigation, pocketing the proceeds, and allowing the same loans they had claimed to be "a problem" to remain in the Trust;

g. charging the Trust for litigation expenses incurred in connection with litigation which did not, and could not, have benefited the Trust or the Certificateholders;

h. imperiling the ratings of the Certificates, and the return to the Certificateholders, by pursuing their own economic self-interest without regard to the consequences to the Trust;

i. transferring servicing functions and decisions, such as the identification of potential breaches of representations and warranties to outside counsel, at the expense of the Trust;

j. restructuring ORIX's servicing and special servicing departments in a manner which created an inherent conflict between ORIX's interest as investor and their duties as a servicer;

k. establishing a deferred compensation "partnership" for ORIX's key employees that was so extreme that it created an innate structural bias among those employees by creating so large a personal stake that it rendered it impossible for said employees to make servicing decisions without regard to ORIX's own investments;

l. using the rights and claims of the Trust and other Certificateholders as negotiating leverage for its own enrichment by offering to trade the enforcement of those rights in exchange for the purchase of ORIX's "B-Pieces";

m. suggesting that the depositors could actually make a profit by repurchasing the performing loans tendered by ORIX, thereby conspiring to benefit each other at the expense of the Trust and the Certificateholders;

n. the use of reckless litigation strategies, to pursue perceived loopholes in loan or deal documents, which presented high risks to the financial interest of the Trust and Certificateholders;

o. advancing moneys to the Trust for the sole purpose of keeping their "B-Pieces" alive, and at an inflated price, at the expense of all other Certificateholders;

p. initiating and prosecuting litigation at the expense of, and to the detriment of other Certificateholders, to avoid the economic risks that ORIX, Dinan, Wurst, Weiner and Thompson knowingly sought and assumed as an investor in the below-investment-grade "B-Pieces"; and

q. furnishing false information in the Distribution Reports designed to mask the true financial health of the Trusts.

202. The KeyCorp Defendants breached the Servicing Standard as well as their fiduciary, good faith and fair dealing, and/or reasonable care duties by, among other things:

a. acting in their own economic self-interest to the detriment of the Certificateholders, such as SFE;

b. charging the Trusts for litigation expenses incurred in connection with litigation which did not, and could not, have benefited the Trust or the Certificateholders;

c. imperiling the ratings of the Certificates, and the return to the Certificateholders, by pursuing their own economic self-interest without regard to the consequences to the Trust;

d. the use of reckless litigation strategies which presented high risks to the financial interest of the Trust and Certificateholders;

e. improperly advancing moneys to the Trust for the sole benefit of increasing profits to the KeyCorp Defendants;

f. initiating and prosecuting litigation at the expense of, and to the detriment of other Certificateholders; and

g. furnishing false information in the Distribution Reports designed to mask the true financial health of the Trusts.

203. Wells Fargo violated the fiduciary duty owed to the Trusts and the Certificateholders of both Trusts, such as SFE, by, among other things:

a. executing powers of attorney for ORIX to act as Wells Fargo's agent and attorney-in-fact in connection with the Trusts and attempting to abdicate Wells Fargo's responsibility for ORIX's wrongdoings against the Trusts and the Certificateholders;

b. "looking the other way," as ORIX and the KeyCorp Defendants depleted the Trusts' and the Certificateholders' assets with advances, unnecessary fees, and/or by committing the breaches by each enumerated herein;

c. obtaining financial benefits at the expense of the Certificateholders of both Trusts;

d. knowingly failing to comply with REMIC regulations to the detriment of the Certificateholders;

e. at the expense of the Certificateholders of both Trusts, allowing ORIX's and/or KeyCorp Defendants' advances on the foreclosed loans to keep up the value of its fees as Trustee;

f. electronically distributing to the Certificateholders Distribution Reports containing false and fraudulent data; and

g. failing to advise all Certificateholders of the existence of the ORIX Partnership where certain key ORIX employees participated in ORIX's ill-gotten profits.

204. As a result of ORIX's, KeyCorp Defendants', and Wells Fargo's breach of fiduciary duty, Plaintiff has suffered monetary losses, short falls in its interest payments and

down grades in the ratings of its certificates, which now cannot be sold and therefore are essentially worthless.

205. The conduct of ORIX, ORIX USA, Dinan, Wurst, Weiner, Thompson, KeyCorp Defendants, and Wells Fargo was a proximate cause of Plaintiff's damages for which it now seeks relief.

206. Plaintiff prays that this Court place a constructive trust for its benefit and the benefit of all Certificateholders on all proceeds, funds, or property that ORIX, ORIX USA, Dinan, Wurst, Weiner, Thompson, KeyCorp Defendants, and Wells Fargo obtained as a result of the breach of their respective fiduciary obligations.

B. Breach of Contract

207. Paragraphs 1 through 206 are incorporated herein by reference and for all purposes as if set out in full. In the alternative, and without waiver of the foregoing, ORIX's, KeyCorp Defendants', and Wells Fargo's conduct, as outlined above amounts to breach of contract.

208. The PSAs of both Trusts are valid and binding contracts enforceable in accordance with their terms. Furthermore, the PSAs set forth ORIX's, KeyCorp Defendants', and Wells Fargo's duties and obligations for the benefit of the Trust and the Certificateholders. Plaintiff is a Certificateholder in both the MLMI and FULBBA Trusts, and a third-party beneficiary of the PSAs.

209. ORIX and the KeyCorp Defendants have materially breached their obligations under the PSAs by, among other things, violating the Servicing Standard in both Trusts. As a direct result of ORIX's and the KeyCorp Defendants' breach of contract, the Certificateholders

have suffered monetary damages, shortfalls in their interest payments and downgrades in the ratings of their certificates, which now cannot be sold and therefore are essentially worthless. As a direct and proximate result of ORIX's and the KeyCorp Defendants' conduct, SFE has suffered damages in excess of $20,000, as of this date.

C. RICO

210. Paragraphs 1 through 209 are incorporated herein by reference and for all purposes as if set out in full. Defendants' conduct, as outlined above gives rise to a claim under 18 U.S.C. § 1961

211. Wells Fargo, ORIX, ORIX USA, Dinan, Wurst, Weiner, Thompson, and the KeyCorp Defendants are "persons" as that term is defined in 18 U.S.C. § 1961(3).

212. The MLMI and the FULBBA Trusts are "enterprises," as that term is defined in 18 U.S.C. § 1961(4).

213. Through a pattern of racketeering activity, ORIX, ORIX USA, Dinan, Wurst, Weiner, Thompson, and the KeyCorp Defendants since April 2006 have acquired an interest, maintain a controlling interest, and control the MLMI and FULBBA Trusts. As Servicer and Special Servicer, ORIX, ORIX USA, Dinan, Wurst, Weiner, Thompson, and the KeyCorp Defendants since April 2006 participated in the operation and management of the affairs of the Trusts.

214. As Trustee, Wells Fargo participated in the operation and management of the Trusts. Wells Fargo also keeps control of the MLMI and FULBBA Trusts through a pattern of racketeering activity.

215. Having devised a scheme to defraud the MLMI and FULBBA Trusts and the Certificateholders, Wells Fargo, ORIX, ORIX USA, Dinan, Wurst, Weiner and Thompson (and the KeyCorp Defendants since April 2006) caused fraudulent Distribution Reports to be electronically distributed to the MLMI and FULBBA Certificateholders and relevant bond rating agencies, on a monthly basis, virtually since the inception of both Trusts and will undoubtedly continue to do so in the future. These monthly reports – intentionally inaccurate, distributed with the intention that the recipients rely on the inaccuracies, and created and/or transmitted with the full knowledge of their falsity and approval by each of Wells Fargo, ORIX, ORIX USA, Dinan, Wurst, Weiner, Thompson, and the KeyCorp Defendants since April 2006 – are designed to conceal continuously the truth of the ORIX Defendants and Wells Fargo's various scams and practices alleged herein to benefit themselves at the expense of SFE, the Trusts, and all Certificateholders. They are also designed and distributed to conceal the truly perilous financial condition of the Trusts. The scheme and purpose of distributing these false reports is (1) to encourage unwise investment in the Trusts, (2) convince investors to maintain their investments while Defendants continue to receive inflated fees for administering the Trusts and distributions for improperly sustained B-pieces, and (3) to prevent questions and challenges from arising from the Certificateholders (and possibly governmental and private bond rating agencies) so that Defendants can continue to reap these ill-gotten gains at the expense of the Trusts and the Certificateholders.

216. In addition, having devised a scheme to defraud the Trusts and the Certificateholders, in late 2002, Wurst and Weiner had at least two interstate telephone conversations with employees of UBS Warburg (Robert Petinato, Ron Garner and Michael

Stern). In one of the telephone calls, Wurst and Weiner demanded that UBS buy back ORIX's MLMI B-Pieces at par value; in the other one Wurst and Weiner suggested that such purchase would eliminate issues pertaining to the previously asserted "problem loans" UBS Warburg deposited in the MLMI Trust. On another occasion Dinan called Bob Stein to make the same or similar request.

217. With knowledge of the scheme to defraud the Trusts and the Certificateholders, Wells Fargo electronically sent the fraudulent Distribution Reports to the MLMI and FULBBA Certificateholders, on a monthly basis, virtually since the inception of both Trusts. Wells Fargo is currently distributing false or fraudulent Distribution Reports, and will undoubtedly continue to do so in the future.

218. SFE relied on these reports – both in its decision to purchase the Certificates and its decisions to hold on to the Certificates despite declining worth. Because of the false picture created and distributed by Wells Fargo, ORIX, ORIX USA, Dinan, Wurst, Weiner and Thompson, SFE invested $112,000 in Certificates in the MLMI Trust, and $52,700 in the FULBBA Trust. Given the potential tax liabilities and discovery of Defendants numerous improper practices in administering the Trusts as alleged herein, the Certificates now cannot be sold and therefore are essentially worthless. As a direct and proximate result of the false and fraudulent Distribution Reports sent or caused to be sent by Defendants, Plaintiff has been damaged. Accordingly, as a Certificateholder in the MLMI and FULBBA Trusts, Plaintiff has been damaged by Defendants' control and management of the Trusts through a pattern of racketeering activity.

219. Pursuant to 18 U.S.C. § 1964(c), Plaintiff is entitled to recover threefold the damages it has sustained and the cost of suit, including reasonable attorney's fees.

D. Negligence

220. Paragraphs 1 through 219 are incorporated herein by reference and for all purposes as if set out in full. In the alternative, and without waiver of the foregoing, ORIX , ORIX USA, Dinan, Wurst, Weiner, and Thompson's and the KeyCorp Defendants' conduct, as outlined above, amounts to negligence in that they failed to meet the Servicing Standard in both Trusts, in, among other ways:

a. foreclosing on performing loans in both the MLMI and FULBBA Trusts;

b. charging the Trusts for expenses in order to improve the value of their B-piece Certificates;

c. failing to properly control litigation expenses;

d. incurring excessive litigation expenses; and/or

e. failing to properly service the loans as both Servicer and Special Servicer in the MLMI and FULBBA Trusts.

221. In addition, Wells Fargo's conduct, as outlined above, amounts to negligence in that, among other ways, Wells Fargo:

a. allowed ORIX and/or the KeyCorp Defendants to foreclose on performing loans in both the MLMI and FULBBA Trusts, without ascertaining the need therof;

b. at the expense of the Certificateholders, reimbursed ORIX and the KeyCorp Defendants for litigation expenses which only increased the amount of its fees as Trustee and the value of ORIX's B-piece Certificates

c. Reimbursed ORIX for litigation expenses incurred in actions brought by ORIX in its capacity as a Certificateholder.

d. failed to properly monitor and control litigation expenses;

e. allowed excessive litigation expenses;

f. failed to properly monitor ORIX's and the KeyCorp Defendants' activities as both Servicer and Special Servicer within the MLMI and FULBBA Trusts, including ORIX's profiling of certain borrowers, guarantors, and properties for foreclosure;

g. failed to monitor advances and distributions and the accounting thereof; and

h. failed to comply with and enforce REMIC regulations, all to the detriment of the Trusts and the Certificateholders, such as SFE.

222. Wells Fargo's conduct, as outlined above, amounts to negligence in so far as Wells Fargo's conduct fails to meet the prudent man standard with regard to, among other things, the 143 foreclosures carried out by ORIX, Dinan, Wurst, Weiner and Thompson.

223. Such negligence is a proximate cause of Plaintiff's damages. As a proximate result of the negligence of ORIX, Dinan, Wurst, Weiner, Thompson, the KeyCorp Defendants, and Wells Fargo's negligence, Plaintiff has suffered damages for which they now seek relief.

E. Gross Negligence

224. Paragraphs 1 through 223 are incorporated herein by reference and for all purposes as if set out in full.

225. The conduct of ORIX, ORIX USA, Dinan, Wurst, Weiner, Thompson, the KeyCorp Defendants, and Wells Fargo, as outlined above, amounts to gross negligence in that it evidences a specific intent to cause substantial injury or harm to Certificateholders, such as SFE. Accordingly, SFE is entitled to exemplary damages.

F. Violations of Section 10(b) and Section 20(a) of the Securities Exchange Act of 1934 and U.S. Securities and Exchange Commission Rule 10b-5.

226. Paragraphs 1 through 225 are incorporated herein by reference for all purposes as if set out in full. This count is brought against Wells Fargo, ORIX, ORIX USA, Dinan, Wurst,

Weiner and Thompson, herein "the Securities Defendants." Defendants, individually and in concert, directly and indirectly, in connection with the sale of the MLMI and FULBBA Certificates: (a) engaged in manipulative and deceptive practices; (b) employed a common plan, scheme, course of conduct, device, and artifice to defraud SFE and other potential Certificateholders; (c) made untrue statements regarding material facts and failed to disclose material facts to SFE and other potential Certificateholders; and (d) aided and abetted the perpetration of a fraud on SFE and other potential Certificateholders.

227. Specifically, Defendants intentionally, knowingly, and/or recklessly employed a course of business in connection with the MLMI and FULBBA Certificates whereby Defendants gained financial benefit at the expense of the Trust, SFE, and the other Certificateholders, who were not informed by Defendants or were affirmatively mislead by Defendants' misstatements – in the prospectuses for the MLMI and FULBBA Certificates or other communications from Defendants – about the following material undisclosed facts and practices:

a. ORIX, with the knowledge, approval, and/or participation of Wells Fargo and the Individual Defendants, covertly purchased all B pieces held by the MLMI and FULBBA Trusts at highly discounted prices in order to gain "Controlling Class" privileges and appointed and/or maintained ORIX as Master Servicer and Special Servicer, thereby systematically disabling the Trust's represented control structures designed to prevent control of the mortgage loans by a single entity.

b. Wells Fargo, despite contrary representations in the MLMI and FULBBA prospectuses and requirements of the relevant PSAs, disclaims any duty to oversee ORIX's practices in acting as Master and Special Servicer in order to avoid liability for its actions.

c. ORIX, with the knowledge, approval, and/or participation of Wells Fargo and the Individual Defendants, makes payment and interest advances to maintain its "Controlling Class" status (including status as Master and Special Servicer) and receives interest payments on its B pieces, thereby keeping the ORIX-owned B pieces alive instead of "junking" the B pieces, which would be in the best interest of the Trust and the Certificateholders. Despite the lack of benefit to the Trust or Certificateholders, ORIX also receives repayment of these advances, plus interest, from the Trust before distributions are made to Certificateholders. By continually applying and permitting large sums of payment and interest advances to make payments on the B piece investments owned by ORIX, Defendants are manipulating the market and improperly insuring against losses to the B pieces in violation of the law and in contravention of the terms of the prospectuses for the MLMI and FULBBA Certificates and of the relevant PSAs, all at the expense of the Certificateholders.

d. ORIX, with the knowledge, approval, and participation of Wells Fargo and the Individual Defendants, improperly classifies performing loans (including loans with no projected loss) as "problem loans" and/or transfers these performing loans to Special Servicing, in contravention of its duties to the Trust and the Certificateholders under the law and as provided in the MLMI and FULBBA prospectuses and relevant PSAs, for the sole purpose of generating unnecessary servicing, foreclosure, and other fees and revenue for ORIX. These fees are paid by the Trust before distributions to Certificateholders. To achieve this aim, ORIX, with the knowledge, approval, and/or participation of Wells Fargo and the Individual Defendants, has employed and continues to employ a number of unfair and predatory servicing practices, including but not limited to: (1) obtaining artificially low appraisals to understate the value of the

mortgaged properties; (2) charging false and unauthorized fees to borrowers, non-payment of which is used to justify foreclosure or seizure of the property; and (3) placing unreasonable and unattainable additional requirements on borrowers, such as tenfold increases in required reserve payments, to ensure default by the borrowers. ORIX, with the knowledge, approval, and/or participation of Wells Fargo and the Individual Defendants, intentionally refuses to properly workout the allegedly "problem loans" and return the loans to master servicing, where servicing fees are substantially lower, which would maximize the net present value of the Trust for the benefit of Certificateholders.

e. ORIX, with the knowledge, approval, and/or participation of Wells Fargo and the Individual Defendants, falsely characterizes expenses of servicing activities as "legal" expenses to be paid by the Trust and Certificateholders rather than by ORIX as required under the prospectuses and PSAs relevant to the MLMI and FULBBA Trusts.

f. ORIX, with the knowledge, approval, and participation of Wells Fargo and the Individual Defendants, has a practice of creating self-serving revenue-garnering opportunities through excessive and unnecessary litigation against mortgage loan depositors – including litigation against Wachovia, Lehman Brothers, Bank of America, Nomura, Solomon Brothers, Artesia and UBS – in order to obtain copies of all origination documents related to the loans in the pools serviced by ORIX, including the MLMI and FULBBA Trust pools, regardless of the performance status of the loans.

g. ORIX, with the knowledge, approval, and participation of Wells Fargo and the Individual Defendants, after combing through the origination documents, manufactures "technical" and/or false bases for problems with the loans and pursues costly efforts to prove

breach of warranty by the depositors, which it proposes to resolve by forcing the depositors to purchase the heavily discounted ORIX "B pieces" at face value, generating huge profits for ORIX.

h. ORIX, with the knowledge, approval, and participation of Wells Fargo and the Individual Defendants, has racked up and continues to rack up unnecessary litigation fees in such litigation against depositors, diverting funds to ORIX that should be paid to MLMI and FULBBA Certificateholders and receiving repayment plus interest on fees "advanced" by ORIX to fund the litigation, which are paid by the Trusts before any distributions are made to the Certificateholders.

i. ORIX, with the knowledge, approval, and participation of Wells Fargo and the Individual Defendants, further re-pools these allegedly "problem loans" into new loan groups, offers new certificates, and obtains additional investment funds in the same loans – all without disclosing the alleged defects in the loans or that such alleged defects negatively affected the value of the Trust certificates.

j. ORIX, with the knowledge, approval, and participation of Wells Fargo and the Individual Defendants, charges litigation expenses to the Trust (to be paid back with interest) for claims brought in its own capacity for its sole benefit, contrary to representations in the prospectus and requirements of the relevant PSAs

k. Wells Fargo entered into undisclosed agreements with ORIX and the Individual Defendants for payment of legal fees to ORIX from MLMI and FULBBA Trust funds outside of the confines of the PSAs, to the detriment of the Certificateholders.

l. ORIX, with the knowledge, approval, and participation of Wells Fargo and the Individual Defendants, avoids paying the Trust or Certificateholders any net proceeds of the litigation brought against depositors by: (1) settling some litigation – including litigation against Bank of America and Lehman Brothers – for an amount less than the exorbitant and unnecessary litigation fees charged to the Trust; (2) depositing settlement proceeds that are obtained into ORIX's operational account instead of Trust accounts; (3) paying ORIX any fees it claimed were owed before depositing any funds into Trust accounts; (4) shifting the funds for settlement of claims from one trust to another trust to conceal its pocketing of settlement proceeds; and/or (5) misrepresenting and re-characterizing the nature of the settlement funds in a manner to avoid payment. Further, even after settling with the loan depositors claims demanding the repurchase of the allegedly "problem loans," the loans are left in the Trust pools to ensure further improper servicing fees for ORIX. Further still, even after representing to Certificateholders that settlement proceeds have been applied to retire foreclosed loans – such as the Lee Hall Loan – Defendants only make such representations and financial entries for accounting and tax purposes, never truly credit the Trusts with the liquidation proceeds, and/or seek to obtain a double-recovery (which is also kept from the Trusts or Certificateholders) through harassing litigation to seize all possible property of the foreclosed borrowers and any alleged guarantors.

m. ORIX, with the knowledge, approval, and participation of Wells Fargo and the Individual Defendants, established a partnership allowing ORIX officers to participate directly in ORIX revenues, including profits from ORIX's "B piece" Certificates, foreclosure fees, resale of foreclosed properties, and interest paid on monies advanced to the Trusts, creating a conflict of interest with the Certificateholders by giving key ORIX employees an incentive to breach their

duties to the Trusts. Specifically, Defendants Thompson, Weiner, Dinan, and Wurst have benefited from the partnership through deferred compensation and have been allowed to invest additional pre-tax monies from their salaries and bonuses into the Partnership, in violation of the relevant prospectuses and the governing PSAs.

n. ORIX, with the knowledge, approval, and participation of Wells Fargo and the Individual Defendants, has repeatedly violated REMIC regulations and threatens to subject the Trust and Certificateholders to penalties and interest to be paid by the Trust and Certificateholders.

o. The activities of Defendants in the last six years – with Wells Fargo as Trustee and ORIX as Special and Master Servicer – resulted in (1) elimination of performing and paying loans from the pools and decreased principal repayments to Certificateholders; (2) a number of loans in the MLMI and FULBBA Trusts being transferred to "special servicing" that is more than ten times the industry average; (2) a number of loans in the MLMI and FULBBA trusts being placed in foreclosure that is many times greater than the industry average; (3) an amount of servicing fees being paid to ORIX that was on a significant and continued rate of increase and is many times higher than the industry average; and (4) a 50% reduction in distribution amounts.

p. ORIX, with the knowledge, approval, and participation of Wells Fargo and the Individual Defendants, applies a servicing standard that is wholly subjective and/or asserts that no servicing standard exists, in contravention of representations in the MLMI and FULBBA prospectuses and requirements of the relevant PSAs

q. ORIX submits falsely optimistic distribution reports to Wells Fargo who eschews all obligations to verify the information before publishing the reports to Certificateholders. In

doing so, ORIX and Wells Fargo artificially inflate the rating of the Certificates in an effort to attract investors and to get a higher return when ORIX sells its own certificates.

2. Wells Fargo, despite its position as Trustee for the benefit of the MLMI and FULBBA Certificateholders, has a conflict of interest because Wells Fargo benefits financially from ORIX's efforts to increase its earnings at the expense of the Certificateholders in the following ways: (1) Wells Fargo's fees as Trustee are calculated as a percentage of the total value of the mortgages in the Trusts; ORIX's unjustified advances to keep its "B pieces" alive postpones default of the weakest loans and inflates Wells Fargo's trustee fees; (2) Wells Fargo makes additional unspecified fees and receives unexplained reimbursements for "expenses" in connection with loans in foreclosure or special servicing fees as Trustee; and (3) Wells Fargo can "book," as an intangible asset, its "Master Servicing Rights" ("MSRs"), the value of which is based in large part upon the inflated fees historically collected by Wells Fargo and the ORIX Defendants as master and special servicer on behalf of Wells Fargo; and (4) the inflated assets of Wells Fargo results in greater compensation to its officers by artificially inflating the value of stock and stock options, which creates an incentive for Wells Fargo officers to acquiesce and/or participate in designs to improperly boost ORIX's revenue as described herein.

228. SFE's interests in the MLMI and FULBBA Certificates are securities for purposes of the federal securities laws. In connection with the acts, conduct, and other wrongs alleged herein, the Securities Defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including the mails, telephone communications, and the facilities of a national securities exchange, including but not limited to electronic transmission and mailing of the MLMI and FULBBA prospectuses, the relevant PSAs, and the distribution reports as alleged

herein. The conduct of Securities Defendants, as outlined herein, amounts to violations of Section 10(b) of the Exchange Act and SEC Rule 10b-5.

229. Further, at all relevant times, Dinan, Wurst, Weiner and Thompson, by virtue of their positions, control, and specific acts were controlling persons of ORIX and ORIX USA within the meaning of Section 20(a) of the Securities and Exchange Act of 1934.

230. Dinan, Wurst, Weiner and Thompson's positions made them privy to, and provided them with knowledge of the material facts concerning the improper practices alleged herein. Dinan, Wurst, Weiner and Thompson had the power and influence, and exercised such power and influence, to engage in the unlawful conduct described above by causing ORIX and ORIX USA to engage in the improper practices alleged herein. Dinan, Wurst, Weiner and Thompson are jointly and severally liable for the substantial damages caused by ORIX and ORIX USA's violations of the federal securities laws.

231. The acts and omissions in furtherance of these manipulative and deceptive practices, including the misstatements of fact and failures to disclose material facts, were done with scienter, and were designed to generate ill-gotten gains for all Securities Defendants at the expense of SFE and other potential Certificateholders.

232. These facts and practices were in existence and known to Securities Defendants (but not to SFE) before SFE purchased the MLMI and FULBBA Certificates. SFE justifiably relied upon the material representations and omissions in purchasing the MLMI and FULBBA Certificates, and absent these representations and omissions – which every MLMI and FULBBA Certificateholder or prospective MLMI and FULBBA Certificateholder is entitled to and would deem material – SFE would not have invested in the MLMI and FULBBA Certificates. Further,

the facts and practices not disclosed to SFE and other potential Certificateholders are material, which creates a presumption under the law satisfying any reliance requirement.

233. In addition and in the alternative, at all relevant times, the market for the MLMI and FULBBA Certificates was an efficient market. The MLMI and FULBBA Certificates met the requirements for listing, and were listed, on the New York Stock Exchange, an efficient and automated market. Wells Fargo furnished public reports regarding performance of the MLMI and FULBBA Certificates and made such reports available to independent rating agencies, which made public evaluations of the estimated value of the MLMI and FULBBA Certificates based on the reports and other information. As a result, the market for MLMI and FULBBA Certificates promptly digested current information regarding the MLMI and FULBBA Certificates from all publicly available sources and reflected such information in MLMI and FULBBA Certificates' price. The price of the MLMI and FULBBA Certificates was artificially inflated by Defendants' fraudulent scheme, misstatements, and omissions described herein when SFE purchased their Certificates. Under these circumstances, all purchasers of the MLMI and FULBBA Certificates – including SFE – suffered injury and a presumption of reliance applies.

234. The Defendants' deceptive, manipulative, and fraudulent actions, including but not limited to the misstatements of fact and failures to disclose material facts as described herein, have caused substantial injury to SFE, and SFE seeks to recover its actual damages from Defendants. SFE is also entitled to recover exemplary damages relating to Defendants' violations of the federal securities laws.

G. Civil Conspiracy

235. Paragraphs 1 through 234 are incorporated herein by reference and for all purposes as if set out in full.

236. As described above, the Defendants agreed and conspired – with intent to do unlawful acts and/or with intent to do otherwise lawful acts by unlawful means – to engage in unlawful acts and/or lawful acts by unlawful means, including securities law violations and breach of fiduciary duties, to increase their profits at the expense of the MLMI and FULBBA Trusts and the Certificateholders of those trusts, including SFE, whose interests Defendants were obligated to protect. SFE – like other MLMI and FULBBA Certificateholders – suffered substantial damages as a result of the Defendants' conspiracy.

237. Defendants' conduct in engaging in the conspiracy was intentional, willful, wanton and/or in reckless disregard of the rights of SFE and the other Certificateholders, thereby justifying an award of exemplary damages.

H. Claims on Behalf of the Trust

238. Paragraphs 1 through 237 are incorporated herein by reference and for all purposes as if set out in full.

239. As set forth herein, ORIX and the KeyCorp Defendants since April 2006, as Master Servicer and Special Servicer, had a duty to administer and service the MLMI and FULBBA Trust funds, on behalf of the Trustee, for the benefit of the Certificateholders and in accordance with (a) any and all applicable laws, (b) the "Servicing Standard," (c) the terms of the relevant PSAs, and (d) the terms of the respective mortgage loans in the Trust pools. In a complex and fraudulent, yet profitable scheme, the ORIX Defendants and the KeyCorp

Defendants since April 2006 have willfully violated these duties, defaulted on its obligations under the relevant PSAs, and caused great harm to the MLMI and FULBBA Trusts and their Certificateholders.

240. Action on behalf of the Trusts is necessary to end the fraudulent and harmful practices of the ORIX Defendants and the KeyCorp Defendants and to compensate the Trusts for losses suffered because of those practices. Wells Fargo has the power to take all necessary actions to stop and correct the activities of the defaulting ORIX Defendants and the KeyCorp Defendants on behalf of the Trusts and is charged with exercising this power with the same degree of care and skill as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. However, Wells Fargo, despite its role as Trustee and the duty of loyalty it owes to the Trusts, has shirked all responsibility to monitor the ORIX Defendants and the KeyCorp Defendants and has failed to take any action to protect the Trusts from the ORIX Defendants' and the KeyCorp Defendants' fraudulent and self-serving activities. Indeed, as set forth herein, Wells Fargo has breached its own fiduciary duties by knowingly participating in and benefiting from the ORIX Defendants' and the KeyCorp Defendants' schemes to cause injury to the Trusts. As such, Wells Fargo possesses an irreconcilable conflict of interest and is sacrificing the interests of the Trusts and the beneficiaries – the Certificateholders – in favor of its own financial position.

241. Because of Wells Fargo's complicity and participation in the scheme, any efforts by SFE or any number of other Certificateholders to demand or prompt Wells Fargo to take action or bring suit to stop the actions of the ORIX Defendants and the KeyCorp Defendants would be unnecessary and futile, and would only result in greater continuing damages to the

Trusts. Likewise, any procedures providing Wells Fargo time to consider potential claims and allowing it to use its discretion to decide whether to act against itself and the ORIX Defendants or the KeyCorp Defendants, as well as any mechanisms to indemnify Wells Fargo for taking any action against the ORIX Defendants or the KeyCorp Defendants, would be unnecessary and unconscionable, and would only result in greater continuing damages to the Trusts.

242. Further, as pleaded herein, SFE and its officers have, on numerous occasions, advised Wells Fargo of its concerns regarding the ORIX Defendant's and the KeyCorp Defendants conduct and the mismanagement of the Trust; sought both an explanation of the activities and the provision of information regarding same; and demanded action by Wells Fargo to correct the fraudulent servicing activities of the ORIX Defendants. Despite knowledge of the wrongdoing and notice of the damage it has caused and will continue to cause the Trusts, Wells Fargo has ignored SFE's demands and unjustifiably refused, in a willful abuse of any discretion it might possess, to take any action to stop the harmful activities of the ORIX Defendants and the KeyCorp Defendants.

243. Accordingly, because of the (i) unwillingness and inability of Wells Fargo to fulfill its duties to act in the best interest of the Trusts; (ii) Wells Fargo's placing itself in a position where it cannot faithfully and competently discharge its duties to the MLMI and FULBBA Trusts; (iii) the futility of attempting to demand Wells Fargo to act, and/or (iv) the inability of the dispersed Certificateholders to enforce their rights, SFE, a Certificateholder and beneficiary of the MLMI and FULBBA Trusts, hereby asserts – in the place of the Trustee Wells Fargo, on behalf of and for the benefit of the MLMI and FULBBA Trusts, and in addition to its

individual claims – the breach of fiduciary duty, breach of contract, negligence, and gross negligence claims against ORIX Defendants and the KeyCorp Defendants stated herein.

244. The conduct of Wells Fargo, the ORIX Defendants and the KeyCorp Defendants described herein constituting breach of fiduciary duty, breach of contract, negligence, and gross negligence has proximately caused damages to the MLMI and FULBBA Trusts, including but not limited to, litigation expenses in excess of $10 million paid in connection with the UBS Warburg and Wachovia lawsuits, most of which were spent to advance the ORIX Defendants' individual interests; devaluation of the MLMI and FULBBA Certificates, rendering such Certificates virtually worthless; millions of dollars in "advances" made by ORIX in furtherance of their own interest in obtaining payments as the owner of the B pieces, which advances were unfairly reimbursed with interest by the MLMI and FULBBA Trusts; all interest payments made to the ORIX Conspirators' "B-Pieces" after the date on which such certificates should have been "junked;" the millions of dollars lost to the Trust as a result of the performing loans which were wrongly foreclosed by ORIX; and all Special Servicing Fees improperly paid to ORIX in the MLMI and FULBBA Trusts. SFE, in the place of the Trustee and for the benefit of the Trust, seeks an award of these damages in an amount to be proven at trial to be paid back into the Trusts and distributed pursuant to applicable law and any governing documents. Additionally, SFE seeks disgorgement of any gains the ORIX Defendants realized from breach of their fiduciary and contractual obligations for the benefit of the MLMI and FULBBA Trusts, including all profits realized upon resale of properties that were foreclosed upon and purchased by Wells Fargo, ORIX or entities with which Wells Fargo or ORIX had an affiliation. To the

extent available under law, SFE further seeks recovery of any litigation costs and reasonable attorney's fees incurred in the prosecution of the claims on behalf of the Trust.

I. Removal of Trustee

245. Paragraphs 1 through 244 are incorporated herein by reference and for all purposes as if set out in full.

246. Wells Fargo has knowingly permitted and/or actively participated in a scheme whereby Wells Fargo and the ORIX Defendants (and the KeyCorp Defendants since April 2006) benefited financially from ongoing intentional, reckless, and or grossly negligent default on obligations under the Trusts' PSAs and duties arising under law. As alleged herein, Wells Fargo's acts and omissions constitute breach of fiduciary duties, breach of contract, negligence, securities fraud, and civil conspiracy. Through its acts and omissions, Wells Fargo has sacrificed the interests of the Trusts and the Certificateholders for its own gain and placed itself in a position where a conflict of interest prevents Wells Fargo from faithfully and competently serving as Trustee.

247. Because of Wells Fargo's complicity and participation in the scheme, any efforts by SFE or any number of other Certificateholders to demand or prompt Wells Fargo to remove itself as Trustee would be unnecessary and futile, and would only result in greater continuing damages to the Certificateholders.

248. Accordingly, SFE, individually and on behalf of and for the benefit of the MLMI and FULBBA Trusts and Certificateholders, requests that the Court enter an order removing Wells Fargo (and any agents, custodians, or administrators appointed by Wells Fargo) as Trustee for the MLMI and FULBBA Trusts; terminating all of Wells Fargo rights and obligations (and

the obligations of any agents, custodians, or administrators appointed by Wells Fargo) under the MLMI and FULBBA Trusts and the mortgage loans, other than any rights or obligations that accrued prior to the date of such termination or removal; and appoint a temporary successor(s) until such time as the Certificateholders – excluding the ORIX Defendants and/or the KeyCorp Defendants – can appoint a permanent successor Trustee.

IX. INJUNCTIVE RELIEF

249. Paragraphs 1 through 248 are incorporated herein by reference and for all purposes as if set out in full.

250. Wells Fargo, ORIX, and/or the KeyCorp Defendants are continuing to unlawfully exploit their positions as Trustee and Special Servicer of the MLMI and FULBBA Trusts, to advance their own interests at the expense of the Certificateholders.

251. Plaintiff has no adequate remedy at law.

252. ORIX and/or the KeyCorp Defendants continue to exploit their position as Master and/or Special Servicer of the MLMI and FULBBA Trusts to advance their own interests as subordinate class Certificateholder by making "advances" to the Trust to keep alive "B-Pieces" which should have disappeared long ago.

253. Wells Fargo as Trustee of the MLMI and FULBBA Trusts continues to accept the advances, and to repay same, plus interest, where it knows, or should know, that such advances benefit only the lowest class of Certificateholders who should have suffered the first losses.

254. By reason of the foregoing as a Certificateholder of the MLMI and FULBBA Trusts, Plaintiff is entitled to an Order enjoining ORIX and the KeyCorp Defendants from serving as the Special Servicer of the MLMI and FULBBA Trusts, enjoining Wells Fargo from

continuing to serve as the Trustee of the MLMI and FULBBA Trusts, and appointing an interim Trustee and Special Servicer for the MLMI and FULBBA Trusts.

X. DEMAND FOR JURY TRIAL

255. Plaintiff respectfully demands a jury trial in this matter.

XI. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer, and after final hearing of this cause, the Court enter judgment as follows:

1. That Plaintiff recover its actual damages in the amounts found by the jury.
2. That Plaintiff's damages be trebled pursuant to 18 U.S.C. § 1964(c).
3. That Wells Fargo**,** the KeyCorp Defendants and ORIX disgorge all fees, revenues, profits on resale of foreclosed properties, compensation and other consideration received from or from operation of the MLMI and FULBBA Trusts, as Certificateholder, Servicer/Special Servicer and Trustee, respectively, and that Plaintiff recover its proportionate share thereof.
4. That Plaintiff recover reasonable attorney's fees incurred in the prosecution of the RICO, breach of contract claims, and claims brought on behalf of the Trusts, and recover all of its costs.
5. That Wells Fargo, ORIX, and the KeyCorp Defendants be enjoined and removed from further activities in the MLMI and FULBBA Trusts as Trustee, Servicer, and Special Servicer.
6. That Plaintiff recover punitive damages from the Defendants; and
7. Plaintiff further prays for any such other and further relief, whether at law or in equity, to which it may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on December 7, 2006, a true and correct copy of the foregoing document has been served, via ECF electronic mail to all counsel of record

/s/ Chuck Blanchard