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10 **UNITED STATES DISTRICT COURT**  
 11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 VINCENT ALVIDRES, Individually and  
 13 on Behalf of All Others Similarly  
 Situated,

14 Plaintiff,

15 v.

16 COUNTRYWIDE FINANCIAL  
 CORPORATION, BECKY BAILEY,  
 17 KATHLEEN BROWN, HENRY G.  
 CISNEROS, GRANT COUCH, JR.,  
 18 JEFFREY M. CUNNINGHAM,  
 ROBERT J. DONATO, MICHAEL E.  
 19 DOUGHERTY, BEN M. ENIS,  
 MARSHALL M. GATES, LEORA  
 20 GOREN, LAWRENCE GEE, EDWIN  
 HELLER, RANJIT KRIPALANI,  
 21 NICHOLAS KRSNICH, STANFORD L.  
 KURLAND, MARTIN R. MELONE,  
 22 ANGELO R. MOZILO, ROBERT T.  
 PARRY, CHUCK QUON, JR., OSCAR  
 23 P. ROBERTSON, KEITH P. RUSSELL,  
 24 THOMAS SALETTA, JENNIFER  
 SANDEFUR, THOMAS SCRIVENER,  
 25 JEFFREY SPEAKES and HARLEY W.  
 26 SNYDER.

27 Defendants.  
 28

**CASE NO. 2:07-cv-05810-RGK-CT**

**CLASS ACTION**

**CORRECTED SECOND AMENDED  
 COMPLAINT FOR BREACHES OF  
 FIDUCIARY DUTY UNDER THE  
 EMPLOYEE RETIREMENT INCOME  
 SECURITY ACT**

**I. INTRODUCTION**

1  
2 1. Plaintiff Vincent Alvidres alleges the following based upon the investigation  
3 of Plaintiff’s counsel, which included a review of U.S. Securities and Exchange  
4 Commission (“SEC”) filings by Countrywide Financial Corporation (“Countrywide” or  
5 the “Company”), including the Company’s proxy statements (Form 14A), annual reports  
6 (Form 10-K), quarterly reports (Form 10-Q), current periodic reports (Form 8-K),  
7 registration statements (Forms S-8), and the annual reports (Form 11-K) filed on behalf  
8 of the Countrywide Financial Corporation 401(k) Savings and Investment Plan, as  
9 amended and restated effective January 1, 1997, and subsequent amendments one  
10 through twelve (attached hereto as Exhibit A) (hereinafter the “Plan”), a review of the  
11 Forms 5500 filed by the Plan with the Department of Labor, documents produced in  
12 response to Plaintiff’s ERISA § 104(b), 29 U.S.C. § 1024(b), request, interviews with  
13 participants of the Plan, and a review of available documents governing the operations of  
14 the Plan. Plaintiff believes that substantial additional evidentiary support will exist for  
15 the allegations set forth herein after a reasonable opportunity for discovery.

**II. NATURE OF THE ACTION**

16  
17 2. This is a class action brought on behalf of the Plan pursuant to §§ 502(a)(2)  
18 and (a)(3) of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C.  
19 §§1132(a)(2) and (a)(3), against the fiduciaries of the Plan for violations of ERISA.

20 3. The Plan is a retirement plan sponsored by Countrywide.

21 4. Plaintiff’s claim arises from the failure of Defendants, who are fiduciaries of  
22 the Plan, to act solely in the interest of the participants and beneficiaries of the Plan, and  
23 to exercise the required skill, care, prudence, and diligence in administering the Plan and  
24 the Plan’s assets during the period January 31, 2006 through the present (the “Class  
25 Period”).

26 5. Plaintiff alleges that Defendants allowed the imprudent investment of the  
27 Plan’s assets in Countrywide equity throughout the Class Period despite the fact that they  
28 clearly knew or should have known that such investment was unduly risky and imprudent

1 due to the Company's serious mismanagement, highly improper and potentially unlawful  
2 business practices, including, among other conduct: (a) marketing and extending  
3 subprime mortgage loans, made on a "low documentation" basis, without adequate  
4 consideration of the borrower's ability to repay and with unreasonably high risk of  
5 borrower default; (b) intentionally marketing subprime loans with high risk of default to  
6 borrowers who qualified for prime-rate loans in order to increase Company profits; (c)  
7 encouraging brokers to market excessively high-cost loans with greater risk of default to  
8 borrowers by offering incentive commissions; (d) representing that Countrywide had  
9 strict and selective underwriting and loan origination practices; (e) representing that  
10 Countrywide had sufficient reserves set aside to cover the high-risk loans it was selling;  
11 (f) operating with inadequate liquidity in relation to the volatility of Countrywide's  
12 business lines and assets; and (g) operating without the requisite internal controls to  
13 determine appropriate loan loss provisions; all of which caused Countrywide's financial  
14 statements to be misleading and which artificially inflated the value of shares of  
15 Countrywide stock and the Countrywide Stock Fund in the Plan ("Fund"), and which  
16 have called into serious question Countrywide's continued viability. In short, during the  
17 Class Period, the Company was seriously mismanaged and faced dire financial  
18 circumstances.

19 6. In addition, Plaintiff alleges that the Insider Selling Defendants suffered  
20 from serious conflicts of interest when they chose their own interests over those of the  
21 Plan's participants and beneficiaries. These Defendants, although they were aware that  
22 the Company stock price was over-inflated due to ongoing serious mismanagement,  
23 potentially unlawful business conduct and inappropriate lending practices at the  
24 Company, failed to discontinue the Plan's investment in Company stock or to inform the  
25 Plan participants of the Company's problems. Instead, they benefited from their inside  
26 knowledge by selling their personal holdings of Countrywide stock for over \$300 million  
27 in proceeds during the Class Period and prior to the stock's precipitous decline.

28

1           7. Plaintiff alleges in Count I that the Defendants who were responsible for the  
2 investment of the Plan's assets breached their fiduciary duties to the Plan's participants in  
3 violation of ERISA by failing to prudently and loyally manage the Plan's investment in  
4 Countrywide stock. In Count II, Plaintiff alleges that the Defendants, who were  
5 responsible for the selection, monitoring and removal of the Plan's other fiduciaries,  
6 failed to properly monitor the performance of their fiduciary appointees and remove and  
7 replace those whose performance was inadequate. In Count III, Plaintiff alleges that  
8 Defendants breached their fiduciary duty to inform the Plan's participants by failing to  
9 provide complete and accurate information regarding the soundness of Countrywide  
10 stock and the prudence of investing and holding retirement contributions in Countrywide  
11 equity. In Count IV, Plaintiff alleges that Defendants breached their duties and  
12 responsibilities as co-fiduciaries by failing to prevent breaches by other fiduciaries of  
13 their duties of prudent and loyal management, complete and accurate communications,  
14 and adequate monitoring. Finally, in Count V, Plaintiff states a claim against  
15 Countrywide for knowing participation in the fiduciary breaches alleged herein.

16           8. As more fully explained below, during the Class Period, Defendants  
17 imprudently permitted the Plan to hold and acquire millions of dollars in Countrywide  
18 stock. Based on publicly available Plan information, it appears that Defendants' breaches  
19 have caused the Plan to lose well over *two hundred million dollars* of retirement savings  
20 during the Class Period.

21           9. This action is brought on behalf of the Plan and seeks to recover losses to the  
22 Plan for which Defendants are personally liable pursuant to ERISA §§ 409 and 502(a)(2),  
23 29 U.S.C. §§ 1109 & 1132(a)(2). In addition, under § 502(a)(3) of ERISA, 29 U.S.C. §  
24 1132(a)(3), Plaintiff seeks other equitable relief from Defendants, including, without  
25 limitation, injunctive relief and, as available under applicable law, constructive trust,  
26 restitution, equitable tracing, and other monetary relief.

27           10. ERISA §§ 409(a) and 502(a)(2) authorize participants such as Plaintiff to  
28 sue in a representative capacity for losses suffered by the Plan as a result of breaches of

1 fiduciary duty. Pursuant to that authority, Plaintiff brings this action as a class action  
2 under Fed. R. Civ. P. 23 on behalf of all participants and beneficiaries of the Plan whose  
3 Plan accounts were invested in Countrywide stock during the Class Period.

4 11. In addition, because the information and documents on which Plaintiff's  
5 claims are based are, for the most part, solely in Defendants' possession, certain of  
6 Plaintiff's allegations are by necessity upon information and belief. At such time as  
7 Plaintiff has had the opportunity to conduct discovery, Plaintiff will, to the extent  
8 necessary and appropriate, amend this Complaint, or, if required, seek leave to amend, to  
9 add such other additional facts as are discovered that further support Plaintiff's claims.

### 10 **III. JURISDICTION AND VENUE**

11 12. **Subject Matter Jurisdiction.** This Court has subject matter jurisdiction  
12 over this action pursuant to 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C.  
13 § 1132(e)(1).

14 13. **Personal Jurisdiction.** ERISA provides for nationwide service of process.  
15 ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). All of the Defendants are either residents of  
16 the United States or subject to service in the United States and this Court therefore has  
17 personal jurisdiction over them. This Court also has personal jurisdiction over them  
18 pursuant to Fed. R. Civ. P. 4(k)(1)(A) because they would all be subject to the  
19 jurisdiction of a court of general jurisdiction in the State of California.

20 14. **Venue.** Venue is proper in this district pursuant to ERISA § 502(e)(2), 29  
21 U.S.C. § 1132(e)(2), because the Plan is administered in this district, some or all of the  
22 fiduciary breaches for which relief is sought occurred in this district, and/or some  
23 Defendants reside and/or transact business in this district.

### 24 **IV. PARTIES**

#### 25 **A. Plaintiff.**

26 15. Plaintiff Vincent Alvidres is a resident of Odessa, Florida. Plaintiff Alvidres  
27 is a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7), and  
28 was a participant in the Plan throughout the Class Period. He continues to hold shares of

1 Company stock in his retirement account in the Plan and did so throughout the Class  
2 Period.

3 **B. Defendants.**

4 16. The Defendants are identified below. All of the Defendants are fiduciaries  
5 of the Plan within the meaning of ERISA, as is explained below in Section VI.  
6 (“Defendants’ Fiduciary Status”), and all of them breached their fiduciary duties in  
7 various ways as is explained in Section XI. (“Causes of Action”).

8 17. **Countrywide Financial Corporation.** Countrywide is a Delaware  
9 corporation, with its principal executive offices located at 4500 Park Granada, Calabasas,  
10 California. According to its website, my.countrywide.com, the Company is a diversified  
11 financial services company focused primarily on real estate finance and related activities.  
12 Countrywide manages its business through five business segments: Mortgage Banking;  
13 Banking; Capital Markets; Insurance; and Global Operations. The mortgage banking  
14 business segment is Countrywide’s core business and generated 48 percent of the  
15 Company’s pre-tax earnings in 2006. Countrywide’s common stock is listed on the New  
16 York Stock Exchange and trades under the ticker symbol “CFC.” As described more  
17 fully below, the Company was a fiduciary for the Plan.

18 18. **Director Defendants.** The Countrywide Board of Directors (hereinafter the  
19 “Board”) is the governing body of Countrywide under its charter, its bylaws, and  
20 applicable Delaware law, and, unless otherwise noted, comprises the persons who carried  
21 out the Company’s responsibilities with respect to the Plan. The members of the Board  
22 during the Class Period included:

23 (a). **Defendant Angelo R. Mozilo** has served as Chairman of the Board  
24 since March 1999 and as the Chief Executive Officer of Countrywide since  
25 February 1998. Prior to his current position, Defendant Mozilo served as  
26 President of the Company from March 2000 through December 2003. He  
27 has served in other executive capacities since the Company’s formation in  
28 March 1969. During the Class Period, Defendant Mozilo sold over 6 million

1 shares of Company stock for proceeds of approximately \$250 million. In  
2 fact, in the last year alone, Defendant Mozilo made a profit of \$135 million  
3 from the sale of Company stock, approximately one-third of the amount he  
4 has reaped over the past 23 years. Since Countrywide began trading on the  
5 NYSE, Defendant Mozilo has sold over \$400 million worth of Countrywide  
6 stock, but, upon information and belief, has never purchased a share.  
7 According to the Form 4 filed with the SEC on October 12, 2007, Defendant  
8 Mozilo continues to hold approximately 500,000 shares in Countrywide  
9 stock. Between 2002 and 2006, Defendant Mozilo received about \$387  
10 million from pay and stock option gains according to the Company's filings  
11 with the SEC. *See* Definitive Proxy Statement, Form 14A, Apr. 27, 2007 at  
12 35; Definitive Proxy Statement, Form 14A, Apr. 28, 2006; Definitive Proxy  
13 Statement, Form 14A, Apr. 29, 2005; Definitive Proxy Statement, Form  
14 14A, Apr. 29, 2004; Definitive Proxy Statement, Form 14A, Apr. 25, 2003.

15 (b). **Defendant Kathleen Brown** served as a Director of Countrywide  
16 from 2005 until her resignation from the Board effective March 29, 2007.

17 (c). **Defendant Henry G. Cisneros** served as a Director of Countrywide  
18 from 2001 until his resignation from the Board on October 18, 2006. During  
19 the Class Period, Defendant Cisneros sold over 79,000 shares of Company  
20 stock for proceeds of approximately \$3 million.

21 (d). **Defendant Jeffrey M. Cunningham** has served as a Director of  
22 Countrywide since 1998. During the Class Period, Defendant Cunningham  
23 sold approximately 75,000 shares of Company stock for proceeds of  
24 approximately \$3 million.

25 (e). **Defendant Robert J. Donato** has served as a Director of  
26 Countrywide since 1993. During the Class Period, Defendant Donato sold  
27 approximately 54,000 shares of Company stock for proceeds of  
28 approximately \$2.1 million.

1 (f). **Defendant Michael E. Dougherty** served as a Director of  
2 Countrywide from 1998 until June 2007. During the Class Period,  
3 Defendant Dougherty sold approximately 227,905 shares of Company stock  
4 for proceeds of approximately \$9.2 million.

5 (g). **Defendant Ben M. Enis** served as a Director of Countrywide from  
6 1984 until his resignation from the Board effective June 2006.

7 (h). **Defendant Edwin Heller** served as a Director of Countrywide from  
8 1993 until his resignation from the Board effective June 2006. During the  
9 Class Period, Defendant Heller sold approximately 106,500 shares of  
10 Company stock for proceeds of approximately \$4 million.

11 (i). **Defendant Stanford L. Kurland** served as a Director of  
12 Countrywide from 1999 until his resignation from the Company effective  
13 September 7, 2006. Defendant Kurland also served as the President of the  
14 Company from 2004 until his resignation and as the Chief Operating Officer  
15 of the Company from 1988 until his resignation. Defendant Kurland served  
16 in a number of other executive positions during his tenure at the Company,  
17 including Executive Managing Director from 2000 to 2003 and Senior  
18 Managing Director from 1989 to 2000. In addition, Defendant Kurland  
19 served as the Chairman and Chief Executive Officer of the Company's  
20 principal operating subsidiary, Countrywide Home Loans, Inc. During the  
21 Class Period, Defendant Kurland sold over 400,000 shares of Company  
22 stock for proceeds of approximately \$15 million.

23 (j). **Defendant Martin R. Melone** has served as a Director of  
24 Countrywide since 2003.

25 (k). **Defendant Robert T. Parry** has served as a Director of Countrywide  
26 since 2004.

27 (l). **Defendant Oscar P. Robertson** has served as a Director of  
28 Countrywide since 2000. During the Class Period, Defendant Robertson

1 sold approximately 152,000 shares of Company stock for proceeds of  
2 approximately \$6 million.

3 (m). **Defendant Keith P. Russell** has served as a Director of Countrywide  
4 since 2003.

5 (n). **Defendant Harley W. Snyder** has been a member of Countrywide's  
6 Board of Directors since 1991. During the Class Period, Defendant Snyder  
7 sold approximately 170,000 shares of Company stock for proceeds of  
8 approximately \$6.5 million.

9 19. During the Class Period, Defendants Mozilo, Cisneros, Cunningham,  
10 Donato, Dougherty, Gates, Heller, Kripalani, Kurland, Robertson, Speakes and Snyder,  
11 (hereinafter, the "Insider Selling Defendants"), sold approximately 8.6 million shares of  
12 Countrywide stock for proceeds of over \$310 million.

13 20. As is explained in more detail below, the Board had certain appointment and  
14 oversight responsibilities with respect to the Plan. The Board and its members listed  
15 above are referred to as the "Director Defendants."

16 21. **Compensation Committee Defendants.** As explained more fully below,  
17 the Plan assigns certain fiduciary responsibilities and duties to Countrywide's Board of  
18 Directors (the "Board"), certain of which, as discussed below, were discharged by the  
19 Compensation Committee of the Board of Directors. The Defendants identified in this  
20 paragraph are referred to as the "Compensation Committee Defendants." On information  
21 and belief, the Compensation Committee Defendants are as follows:

22 (a). **Defendant Henry G. Cisneros** has served as a member of the  
23 Compensation Committee.

24 (b). **Defendant Jeffrey M. Cunningham** has served as a member of the  
25 Compensation Committee.

26 (c). **Defendant Robert J. Donato** has served as a member of the  
27 Compensation Committee.  
28

1 (d). **Defendant Michael E. Dougherty** has served as a member of the  
2 Compensation Committee.

3 (g). **Defendant Edwin Heller** has served as a member of the  
4 Compensation Committee.

5 (h). **Defendant Oscar P. Robertson** has served as a member of the  
6 Compensation Committee.

7 (i). **Defendant Harley W. Snyder** has served as a member of the  
8 Compensation Committee.

9 22. **Administrative Committee and its members.** As explained more fully  
10 below, the Plan assigns certain fiduciary responsibilities and duties to the Countrywide  
11 Financial Corporation Administrative Committee of Employee Benefit Plans  
12 (“Administrative Committee”). Administrative Committee members have full authority  
13 and power to administer and construe the Plan. The Defendants identified in this  
14 paragraph are referred to as the “Administrative Committee Defendants.” On  
15 information and belief, the individual Administrative Committee Defendants are as  
16 follows:

17 (a). **Defendant Becky Bailey** has served as a member of the  
18 Administrative Committee. Upon information and belief, Defendant Bailey  
19 is a Managing Director, Executive Compensation and Global Benefits, at  
20 Countrywide.

21 (b). **Defendant Marshall M. Gates** has served as a member of the  
22 Administrative Committee. Upon information and belief, Defendant Gates  
23 is a Senior Managing Director and Chief Administrative Officer at  
24 Countrywide. During the Class Period, Defendant Gates sold approximately  
25 75,000 shares of Company stock for proceeds of approximately \$3 million.

26 (c). **Defendant Lawrence R. Gee** has served as a member of the  
27 Administrative Committee. Upon information and belief, Defendant Gee is  
28 a Managing Director, Technical Accounting, at Countrywide.

1 (d). **Defendant Leora Goren** has served as a member of the  
2 Administrative Committee. Upon information and belief, Defendant Goren  
3 is a Senior Managing Director and Chief Human Resources Officer at  
4 Countrywide.

5 (e). **Defendant Charles K. Quon, Jr.** served as a member of the  
6 Administrative Committee until February 13, 2007. Upon information and  
7 belief, Defendant Quon is a Managing Director, Compensation and Benefits  
8 at Countrywide.

9 (f). **Defendant Thomas Saletta** served as a member of the  
10 Administrative Committee until June 13, 2006.

11 23. **Investment Committee and its members.** As explained more fully below,  
12 the Plan assigns certain fiduciary responsibilities and duties to the Investment Committee  
13 of Employee Benefit Plans (“Investment Committee”). Specifically, the Investment  
14 Committee has the delegated responsibility for selecting the investment funds in the Plan  
15 and for monitoring the performance of those funds. The Defendants identified in this  
16 paragraph are referred to as the “Investment Committee Defendants.” On information  
17 and belief, the individual Investment Committee Defendants are as follows:

18 (a). **Defendant J. Grant Couch, Jr.** has served as a member of the  
19 Investment Committee. Upon information and belief, Defendant Couch is a  
20 Managing Director and Chief Operations Officer at Countrywide Capital  
21 Markets.

22 (b). **Defendant Marshall M. Gates** has served as a member of the  
23 Investment Committee.

24 (c). **Defendant Leora Goren** has served as a member of the Investment  
25 Committee. Upon information and belief, Defendant Goren is a Senior  
26 Managing Director and Chief Human Resources Officer at Countrywide.

27 (d). **Defendant Nicholas Krsnich** served as a member of the Investment  
28 Committee until June 30, 2006. Upon information and belief, Defendant

1 Krsnich was Chief Investment Officer at Countrywide.

2 (e). **Defendant Ranjit M. Kripalani** served as a member of the  
3 Investment Committee until September 26, 2006. Upon information and  
4 belief, Defendant Kripalani is Executive Managing Director, President &  
5 Chief Executive Officer at Countrywide Capital Markets. During the Class  
6 Period, Defendant Kripalani sold approximately 68,000 shares of Company  
7 stock for proceeds of approximately \$2,700,000.

8 (f). **Defendant Jennifer Sandefur** has served as a member of the  
9 Investment Committee. Upon information and belief, Defendant Sandefur is  
10 a Senior Managing Director and Treasurer at Countrywide.

11 (g). **Defendant Thomas Scrivener** has served as a member of the  
12 Investment Committee. Upon information and belief, Defendant Scrivener  
13 is a Managing Director, Financial Analysis and Administration, at  
14 Countrywide.

15 (h). **Defendant Jeffrey Speakes** served as a member of the Investment  
16 Committee until April 17, 2007. Upon information and belief, Defendant  
17 Speakes is a Senior Managing Director and Chief Economist at  
18 Countrywide. During the Class Period, Defendant Speakes sold  
19 approximately 52,000 shares of Company stock for proceeds of  
20 approximately \$2,300,000.

21 24. As illustrated below in Section VII. E (“Defendants Suffered From Conflicts  
22 of Interest”), the individual Defendants’ sales of Company stock increased during the  
23 Class Period as the financial condition of the Company deteriorated.

## 24 **V. THE PLAN**

### 25 **A. Background.**

26 25. The Plan, sponsored by Countrywide, is an “employee pension benefit plan,”  
27 as defined by § 3(2)(A) of ERISA, 29 U.S.C. § 1002(2)(A). The Plan is a legal entity  
28 that can sue and be sued. ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1). However, in a

1 breach of fiduciary duty action such as this, the Plan is neither a defendant nor a plaintiff.  
2 Rather, pursuant to ERISA § 409, 29 U.S.C. § 1109, and the law interpreting it, the relief  
3 requested in this action is for the benefit of the Plan and its participants/beneficiaries.

4 26. The assets of an employee benefit plan, such as the Plan here, must be “held  
5 in trust by one or more trustees.” ERISA § 403(a), 29 U.S.C. § 1103(a). During the  
6 Class Period, the assets of the Plan were held in a trust fund administered by Fidelity  
7 Investments (“Fidelity”), the Plan’s trustee. *See* Countrywide Financial Corporation  
8 401(k) Savings and Investment Plan, Annual Report (Form 11-K) at 10 (Dec. 31, 2006)  
9 (hereinafter the “2006 Form 11-K”).

10 27. The Plan provides benefits, except in limited circumstances, for all  
11 employees. Effective January 1, 2004, “An employee becomes eligible to participate in  
12 the Plan as soon as administratively possible following the date he or she meets the  
13 following requirements: (A) Attainment of age 21; and (B) Completion of the Eligibility  
14 Computation Period, if he or she is then an Eligible Employee.” Amendment Number  
15 Three to the Countrywide Financial Corporation 401(k) Savings and Investment Plan  
16 § 5.04(a) (Dec. 3, 2003) (hereinafter “Plan Amendment Three”).

17 28. Under the Plan, an account is established and maintained for each  
18 participant, reflecting the manner in which each account is invested and the value of the  
19 investments including withdrawals, distributions, and any charges or credits made to the  
20 account. *See* Countrywide Credit Industries, Inc. 401(k) Savings and Investment Plan, as  
21 amended and restated effective January 1, 1997 § 7.01 (hereinafter “Plan Document”).

22 29. The Countrywide Stock Fund holds the Plan’s shares of Countrywide stock.

23 **B. Employee and Employer Contributions.**

24 30. At all relevant times, the Plan had two separate components: (1) employee  
25 contributions, and (2) employer contributions.

26 31. Plan participants could elect, via Salary Deferral Contributions, to contribute  
27 to the Plan up to 40 percent of their eligible compensation per year subject to IRS Code  
28 limitations. *See* Plan Amendment Three § 4.01(a); Plan Document § 6.02(a).

1 32. One of the investment options made available to participants by the Plan  
2 fiduciaries is the Countrywide Stock Fund. The Plan is not designed to require the  
3 Company Stock Fund. Rather, as discussed in more detail below, the Company Stock  
4 Fund is an optional feature of the Plan that the Plan Administrator “may select” as it  
5 determines appropriate for the investment of participants’ accounts. Plan Document  
6 § 8.02(a).

7 33. Plan participants could invest up to 50 percent of their Salary Deferral  
8 Contributions in Company Stock. *Id.* § 8.04(c).

9 34. Despite making its contributions in Company Stock throughout the Class  
10 Period, the Company had the discretion to make Employer Matching Contributions and  
11 Employer Discretionary Contributions “**in cash or in Company Stock**” pursuant to the  
12 Plan document. *Id.* § 5.04.<sup>1</sup>

13 35. Additionally, the Company had discretionary authority for determining the  
14 amount, if any, of Employer Matching Contributions and Employer Discretionary  
15 Contributions for each eligible Plan participant. *See* Plan Document §§ 5.01, 5.02.

16 36. Participants were not fully vested in their Employer Contributions Accounts  
17 until five years of service. *See* Plan Document § 9.02; Ninth Amendment to the  
18 Countrywide Financial Corporation 401(k) Savings and Investment Plan § 9.02(b) (Jan.  
19 1, 2006) (hereinafter “Plan Amendment Nine”).

### 20 **C. Company Stock in the Plan.**

21 37. As stated in the Plan: “The Administrator may select such additional  
22 investment vehicles as it determines appropriate for the investment of Participants’  
23 Accounts, including, but not limited to, Company Stock.” Plan Document § 8.02(a).  
24 Hence, whether to offer Company stock as an investment option is a discretionary feature

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25 <sup>1</sup> The Plan was amended in November 2006 so that Employer Matching Contributions  
26 were to be made in Company Stock; however, the Company still had the discretion to  
27 make Employer Discretionary Contributions in either cash or Company Stock. *See*  
28 Eleventh Amendment to the Countrywide Financial Corporation 401(k) Savings and  
Investment Plan § 5.04(a) (Nov. 2, 2006) (hereinafter “Plan Amendment Eleven”).

1 of the Plan over which Plan fiduciaries exercised control.

2 38. For most Plan participants, “the portions of a participant’s account which in  
3 [sic] invested in Company Stock shall not be eligible for investment in any other  
4 Investment Fund.” Plan Document § 8.04(a).

5 39. The Plan Administrator had the discretion to “adopt rules permitting  
6 Participants to elect to invest all or a portion of the Company Stock held in their  
7 Accounts in another Investment Fund.” *Id.* at § 8.04(b).

8 40. During the Class Period, Countrywide Company Stock represented more  
9 than 30 percent of the Plan’s net assets. *See* 2006 Form 11-K.

10 41. The Plan has incurred substantial losses as a result of the Plan’s investment  
11 in Countrywide stock. As of December 31, 2006, the Plan held approximately 9 million  
12 shares of Countrywide stock, then having a market value of approximately \$350 million.  
13 *Id.* at 12. Following revelations that Countrywide engaged in predatory subprime lending  
14 practices, among other improper practices, Countrywide stock trades at approximately  
15 \$9.01 per share as of the date of this Complaint, representing a decline of approximately  
16 72 percent since the beginning of the Class Period. Upon information and belief, the  
17 value of Countrywide stock in the Plan is now approximately \$80 million.

18 42. While the duty to diversify does not apply to investment in Company stock  
19 in the plan, ERISA § 404(a)(2), 29 U.S.C. § 1104(a)(2), the fiduciaries remain bound by  
20 the other core ERISA fiduciary duties, including the duties to act loyally, prudently, and  
21 for the exclusive purpose of providing benefits to plan participants.

22 43. Hence, if plan fiduciaries know or if an adequate investigation would have  
23 revealed that company stock no longer was a prudent investment, the fiduciaries are  
24 required to discontinue offering the stock as a plan investment option, provide complete  
25 and accurate information to plan participants of the risk of continuing to make and  
26 maintain investment in the stock, and, to the extent appropriate under the circumstances,  
27  
28

1 sell the plan's holding of company stock, and invest the plan assets in other suitable  
2 investments. Defendants took none of these actions.<sup>2</sup>

3 **D. Purported ESOP Component.**

4 44. In October, 1991, the "Countrywide Credit Industries, Inc. Profit Sharing  
5 Stock Ownership Plan ("ESOP") was merged into the Plan and the ESOP accounts were  
6 transferred to the Plan." Plan Document at "Purpose." After the merger, the "Plan  
7 consisted of a profit-sharing plan with 401(k) and employee stock ownership plan  
8 features. . . ." *Id.*

9 45. An employee stock ownership plan is an ERISA plan that is designed to  
10 invest primarily in "qualifying employer securities." 29 U.S.C. § 1107(d)(6)(A). As with  
11 a 401(k) plan without an ESOP component, fiduciaries of an ESOP remain bound by core  
12 ERISA fiduciaries duties, including the duties to act loyally, prudently, and for the  
13 exclusive purpose of providing benefits to plan participants.

14 46. On information and belief, the Plan did not satisfy all of the statutory and  
15 regulatory mandates with respect to ESOP design and/or operation. For example, the  
16 ESOP component is not designed to invest primarily in qualifying employer securities in  
17 violation of 29 C.F.R. § 2550.4073-6(b).

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18  
19  
20 <sup>2</sup> In November, 2006, around the time the Pension Protection Act of 2006 went into  
21 effect, the Plan was amended so that a Participant could direct investments in Company  
22 Stock out of the Employer Contribution Account, whether or not such contributions had  
23 vested. *See* Plan Amendment Eleven § 8.03(e); Pension Protection Act of 2006  
24 § 901(a)(1), I.R.C. § 401(a)(35) (allowing a plan participant with at least three years of  
25 service to divest the portion of the account invested in employer securities that is  
26 attributable to employer contributions in other investment options). Additionally at this  
27 time, the Plan was amended so that a participant could change his or her "investment  
28 election with respect to existing investments in Company stock in his or her Account,  
provided that at the time of such change, including exchanges from other available  
investment options, the value of the Participants' investment in Company Stock shall  
not exceed fifty percent (50%) of the total value of the Account." Plan Amendment  
Eleven § 8.04(c).



1 51. As fiduciaries, Defendants were required by ERISA § 404(a)(1), 29 U.S.C.  
2 § 1104(a)(1), to manage and administer the Plan, and the Plan's investments solely in the  
3 interest of the Plan's participants and beneficiaries and with the care, skill, prudence, and  
4 diligence under the circumstances then prevailing that a prudent man acting in a like  
5 capacity and familiar with such matters would use in the conduct of an enterprise of a like  
6 character and with like aims.

7 52. Plaintiff does not allege that each Defendant was a fiduciary with respect to  
8 all aspects of the Plan's management and administration. Rather, as set forth below,  
9 Defendants were fiduciaries to the extent of the specific fiduciary discretion and authority  
10 assigned to or exercised by each of them, and, as further set forth below, the claims  
11 against each Defendant are based on such specific discretion and authority.

12 53. Instead of delegating all fiduciary responsibility for the Plan to external  
13 service providers, Countrywide chose to assign the appointment and removal of  
14 fiduciaries to the monitoring Defendants named herein. These persons and entities in  
15 turn selected Countrywide employees, officers and agents to perform most relevant  
16 fiduciary functions.

17 54. ERISA permits fiduciary functions to be delegated to insiders without an  
18 automatic violation of the rules against prohibited transactions, ERISA § 408(c)(3), 29  
19 U.S.C. § 1108(c)(3), but insider fiduciaries, like external fiduciaries, must act solely in  
20 the interest of participants and beneficiaries, not in the interest of the Plan sponsor.

21 **B. The Company's Fiduciary Status.**

22 55. Pursuant to the Plan document, up until the Plan was amended in November,  
23 2006, the Company was the "Administrator" of the Plan, as that term is defined under  
24 ERISA, and a "Named Fiduciary" for purposes of Section 402(a)(2) of ERISA. Plan  
25 Document §§ 14.01, 14.04; Amendment Number Five to the Countrywide Financial  
26 Corporation 401(k) Savings and Investment Plan § 14.01 (June 15, 2004) (hereinafter  
27 "Plan Amendment Five"); Countrywide Financial Corporation Statement of Investment  
28 Objectives and Policies for the 401(k) Savings and Investment Plan at 2 (July 7, 2003)

1 (hereinafter the “2003 Statement”) (attached as Exhibit B).

2 56. The Company’s authority and powers included the following:

3 (a) to administer and construe the Plan, subject to applicable  
4 requirements of law.

5 \*\*\*

6 (ii) To make and enforce such rules and regulations, which shall be  
7 uniform and nondiscriminatory, and to prescribe such forms, as it deems  
8 necessary or proper for the efficient administration of the Plan;

9 (iii) To construe and interpret the Plan, to resolve ambiguities, and  
10 inconsistencies and to supply omissions with respect to the Plan provisions,  
11 which determinations shall be final and conclusive on all persons claiming  
12 benefits under the Plan;

13 (iv) To decide all questions concerning the Plan. . . .

14 \*\*\*

15 (v) To determine the amount of benefits which shall be payable to any  
16 person in accordance with the provisions of the Plan;

17 (vi) To retain such consultants, accountants and attorneys as may be  
18 deemed necessary or desirable to render statements, reports, and advice with  
19 respect to the Plan and to assist the Administrator in complying with all  
20 applicable rules and regulations affecting the Plan; any consultants,  
21 accountants and attorneys may be the same as those retained by the Plan;  
22 and

23 (vii) To exercise all other powers specified in the Plan.

24 (b) The Administrator may adopt such rules for the conduct of its affairs as it  
25 deems appropriate.

26 (c) Any decisions and determinations made by the Administrator pursuant to  
27 its duties and powers described in the Plan shall be conclusive and binding  
28 upon all parties. The Administrator shall have sole discretion in carrying out

1 its responsibilities.

2 Plan Document § 14.02.

3 57. Such duties were to be performed on behalf of the Company by such  
4 “persons or committee as may be appointed by the Board of Directors” of Countrywide.  
5 *Id.* at § 14.01.

6 58. The Company could delegate its duties and could appoint “accountants,  
7 actuaries, legal counsel, investment advisors, investment managers, claims  
8 administrators, specialists and other persons as the Administrator deems appropriate in  
9 connection with administering the Plan.” *Id.* at § 14.03.

10 59. Moreover, upon information and belief, in order to comply with ERISA,  
11 during at least part of the Class Period the Company exercised responsibility for  
12 communicating with participants regarding the Plan in a plan-wide, uniform, mandatory  
13 manner, by means of the Plan’s Summary Plan Description (“SPD”). *See* ERISA  
14 § 101(a)(1) (requiring the plan administrator to furnish to each participant covered under  
15 the plan and to each beneficiary who is receiving benefits under the plan a summary plan  
16 description). These SPDs incorporated by reference Countrywide’s SEC filings, thus  
17 converting such materials into fiduciary communications.

18 60. The Company, as Plan Administrator, was responsible for determining  
19 whether to offer Company stock as a Plan investment option. Plan Document § 8.02(a).  
20 Furthermore, the Company was responsible for determining the amount, if any, of  
21 Employer Matching and Employer Discretionary Contributions, as well as the discretion  
22 of allocating the Employer Matching Contributions and/or Employer Discretionary  
23 Contributions “in cash or in Company Stock.” *Id.* at § 5.04; *see supra* text accompanying  
24 note 1.

25 61. Additionally, while the Plan provided that “the portion of a Participant’s  
26 Account which in [sic] invested in Company Stock shall not be eligible for investment in  
27 any other Investment Fund,” the Company had the discretion to “adopt rules permitting  
28 Participants to elect to invest all or a portion of the Company Stock held in their

1 Accounts in another Investment Fund.” *Id.* at § 8.04(b)-(c).

2 62. Moreover, Countrywide, at all applicable times, has exercised control over  
3 the activities of its employees that performed fiduciary functions with respect to the Plan,  
4 including the Administrative Committee Defendants and the Investment Committee  
5 Defendants, and, on information and belief, can hire or appoint, terminate, and replace  
6 such employees at will. Countrywide is, thus, responsible for the activities of its  
7 employees through traditional principles of agency and *respondeat superior* liability.

8 63. Finally, under basic tenants of corporate law, Countrywide is imputed with  
9 the knowledge that the Defendants had knowledge of the misconduct alleged herein, even  
10 if not communicated to Countrywide.

11 64. Consequently, in light of the foregoing duties, responsibilities, and actions,  
12 the Company was both a named fiduciary of the Plan pursuant to ERISA § 402(a)(1), 29  
13 U.S.C. § 1102(a)(1), and *de facto* fiduciary within the meaning of ERISA § 3(21), 29  
14 U.S.C. § 1002(21), in that it exercised discretionary authority or discretionary control  
15 respecting management of the Plan, exercised authority or control respecting  
16 management or disposition of the Plan’s assets, and/or had discretionary authority or  
17 discretionary responsibility in the administration of the Plan.

18 **C. The Director Defendants’ Fiduciary Status Under the Plan.**

19 65. Countrywide, as a corporate entity, cannot act on its own without any human  
20 counterpart. In this regard, during the Class Period, upon information and belief,  
21 Countrywide relied and continues to rely directly on the members of the Board to carry  
22 out certain of its fiduciaries responsibilities with respect to the Plan. As a result, the  
23 Director Defendants are functional fiduciaries under ERISA.

24 66. Moreover, upon information and belief, the Director Defendants established  
25 the Compensation Committee, Investment Committee and Administrative Committee to  
26 carry out fiduciary duties with respect to the Plan. *Id.* at § 14.01; Compensation  
27 Committee Charter at 1 (attached hereto as Exhibit C); Plan Amendment Five § 14.01.

28

1           67. Pursuant to the Compensation Committee Charter, the Director Defendants  
2 delegated to the Compensation Committee the duty to appoint and monitor the  
3 Investment and Administrative Committees. Compensation Committee Charter at 3. As  
4 the Compensation Committee was to report regularly to the Director  
5 Defendants according to the Compensation Committee Charter, the Director Defendants  
6 retained fiduciary responsibility in this respect. *Id.* at 1.

7           68. As a result of this appointment authority, the Director Defendants were  
8 required to monitor, provide critical information to their appointees regarding the  
9 Company and the Plan, and if prudence so dictated, remove the members of the  
10 Compensation Committee, Investment Committee and Administrative Committee who  
11 failed to faithfully discharge their responsibilities under ERISA. Plan Document § 14.01;  
12 Compensation Committee Charter at 3; Plan Amendment Five § 14.01.

13           69. Thus, according to Department of Labor regulations, the Director  
14 Defendants exercised a fiduciary function under ERISA. 29 C.F.R. § 2509.75-8 (D-4).

15           70. Consequently, in light of the foregoing duties, responsibilities, and actions,  
16 the Director Defendants were both named fiduciaries of the Plan pursuant to ERISA  
17 § 402(a)(1), 29 U.S.C. § 1102(a)(1), and *de facto* fiduciaries of the Plan within the  
18 meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), during the Class Period in that they  
19 exercised discretionary authority or discretionary control respecting management of the  
20 Plan, exercised authority or control respecting management or disposition of the Plan's  
21 assets, and/or had discretionary authority or discretionary responsibility in the  
22 administration of the Plan.

23 **D. The Compensation Committee Defendants' Fiduciary Status.**

24           71. During at least part of the proposed Class Period, the Board of Directors was  
25 to appoint persons or committees to perform Plan duties on behalf of the Company. Plan  
26 Document § 14.01; Plan Amendment Five § 14.01.

27           72. Pursuant to the Compensation Committee Charter (attached hereto as  
28 Exhibit C), the Compensation Committee has the duty "to discharge the responsibilities

1 of the Board of Directors [of Countrywide] relating to the compensation of the  
2 Company's Directors, executives, and employees." Compensation Committee Charter at  
3 1.

4 73. In regards to the Plan, the Compensation Committee has the authority and  
5 duty to "appoint or remove individuals authorized to make administrative and investment  
6 decisions on behalf of the Company with respect to employee benefit plans, including but  
7 not limited to, the Company's 401(k) and pension plans and monitor their performance."  
8 *Id.* at 3.

9 74. The Compensation Committee appointed and had a duty to monitor  
10 members of the Investment Committee. Countrywide Financial Corporation 401(k)  
11 Savings and Investment Plan Statement of Investment Policy at 1 (Oct. 1, 2006)  
12 (hereinafter the "2006 Statement") (attached as Exhibit D) ("The Compensation  
13 Committee...has appointed the Investment Committee to oversee the investment  
14 alternatives made available to participants and beneficiaries under the Plan").

15 75. In addition to appointing members of the Investment Committee, per the  
16 2006 Statement, the Compensation Committee also had the responsibility to "terminate  
17 members of the Investment Committee at any time, with or without cause." *Id.* at 3.

18 76. Per the 2003 Statement, the Compensation Committee delegated to the  
19 Investment Committee, "the authority and powers [sic] for selection of investment funds  
20 and monitoring performance of investment funds." 2003 Statement at 2.

21 77. Upon information and belief, the Compensation Committee appointed and  
22 had a duty to monitor members of the Administrative Committee. Thus, according to  
23 Department of Labor regulations, the Compensation Committee exercised a fiduciary  
24 function under ERISA. 29 C.F.R. § 2509.75-8 (D-4).

25 78. Additionally upon information and belief, the Compensation Committee  
26 made regular reports to the Board regarding its duties under the Compensation  
27 Committee Charter, including its appointment and monitoring duties of the Investment  
28 and Administrative Committees. *See* Compensation Committee Charter at 1 ("The

1 Committee shall make regular reports to the Board.”).

2 79. Consequently, in light of the foregoing duties, responsibilities, and actions,  
3 the Compensation Committee Defendants were fiduciaries of the Plan within the meaning  
4 of ERISA § 3(21), 29 U.S.C. § 1002(21), during the Class Period in that they exercised  
5 discretionary authority or discretionary control respecting management of the Plan,  
6 exercised authority or control respecting management or disposition of the Plan’s assets,  
7 and/or had discretionary authority or discretionary responsibility in the administration of  
8 the Plan.

9 80. The Compensation Committee also had a duty to report to the Board  
10 pursuant to the Compensation Committee Charter at 1.

11 **E. The Administrative Committee Defendants’ Fiduciary Status.**

12 81. The Plan provides that as of November 2006, the Administrative Committee  
13 is the “Plan Administrator,” and as the Administrator it shall have the following powers  
14 and duties:

15 (i). To require any person to furnish such information as it may request  
16 for the purpose of the proper administration of the Plan as a condition to  
17 receiving benefits under the Plan;

18 (ii). To make and enforce such rules and regulations, which shall be  
19 uniform and nondiscriminatory, and to prescribe such forms, as it deems  
20 necessary or proper for the efficient administration of the Plan;

21 (iii). To construe and interpret the Plan, to resolve ambiguities, and  
22 inconsistencies and to supply omissions with respect to the Plan provisions,  
23 which determinations shall be final and conclusive on all persons claiming  
24 benefits under the Plan;

25 (iv). To decide all questions concerning the Plan, including the eligibility  
26 of any person to participate in the Plan and the status and rights of any  
27 Participant or Beneficiary under the Plan;  
28

1 (v). To determine the amount of benefits which shall be payable to any  
2 person in accordance with the provisions of the Plan;

3 (vi). To retain such consultants, accountants and attorneys as may be  
4 deemed necessary or desirable to render statements, reports, and advice with  
5 respect to the Plan and to assist the Administrator in complying with all  
6 applicable rules and regulations affecting the Plan; any consultants,  
7 accountants and attorneys may be the same as those retained by the Plan;  
8 and

9 (vii). To exercise all other powers specified in the Plan.

10 Plan Amendment Eleven § 14.01; Plan Document § 14.02(a)(i) – (vii).

11 82. Moreover, upon information and belief, in order to comply with ERISA,  
12 during at least part of the Class Period the Administrative Committee exercised  
13 responsibility for communicating with participants regarding the Plan in a plan-wide,  
14 uniform, mandatory manner, by means of the Plan's SPDs. *See* ERISA § 101(a)(1)  
15 (requiring the plan administrator to furnish to each participant covered under the plan and  
16 to each beneficiary who is receiving benefits under the plan a summary plan description).  
17 These SPDs incorporated by reference Countrywide's SEC filings, thus converting such  
18 materials into fiduciary communications.

19 83. Consequently, in light of the foregoing duties, responsibilities, and actions,  
20 the Administrative Committee Defendants were both named fiduciaries of the Plan  
21 pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), and *de facto* fiduciaries within  
22 the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that they exercised discretionary  
23 authority or discretionary control respecting management of the Plan, exercised authority  
24 or control respecting management or disposition of the Plan's assets, and/or had  
25 discretionary authority or discretionary responsibility in the administration of the Plan.

1 **F. The Investment Committee Defendants' Fiduciary Status.**

2 84. The Plan provides that the Investment Committee is a "Named Fiduciary"  
3 for purposes of § 402(a) of ERISA. It has been delegated the responsibility of selecting  
4 the investments in the Plan and monitoring the performance of the investment funds. *See*  
5 Plan Document § 14.01; Plan Amendment Five § 14.01; Plan Amendment Eleven  
6 § 14.01; *see also* 2003 Statement at 1 ("The Investment Committee has been appointed to  
7 oversee the investments of the Plans"); 2006 Statement at 1 ("The Compensation  
8 Committee has appointed the Investment Committee to oversee the investment  
9 alternatives made available to participants and beneficiaries of the Plan"). Upon  
10 information and belief, the Investment Committee discharged this responsibility together  
11 with the Plan Administrator pursuant to § 8.02(a) of the Plan.

12 85. Pursuant to the 2003 Statement, the Investment Committee was charged with  
13 the following objectives:

- 14 • to provide an array of diverse investment options that enables Plan participants  
15 to select investments or groups of investments that have various return and risk  
16 characteristics to meet their individual retirement goals;
- 17 • to provide Plan participants with sufficient education on asset allocation,  
18 diversification, risk tolerance, and long term and short term planning, so that  
19 participants may make reasoned, logical, decisions regarding their individual  
20 investment program within the Plan;
- 21 • to monitor the progress of each investment option to determine compliance with  
22 established goals and objectives; and
- 23 • to ensure that the Plan operates in compliance with all existing laws and  
24 regulations governing the management and operation of retirement plans.

25 *Id.* at 1. In addition, the 2003 Statement provides that the Investment Committee ensure a  
26 sufficient number of investment options are provided such that participants will be able to  
27 structure an individual investment program that spans a broad spectrum of return and risk  
28 and sets out several guidelines for the selection of Plan investment options. *Id.* at 2-3.

1 86. The 2006 Statement, sets out that the following goals for the Investment  
2 Committee:

- 3 • Offer an appropriate number of investment options covering a range of  
4 expected risk and return characteristics sufficient to provide participants with  
5 the opportunity to create a total portfolio appropriate to their investment  
6 circumstances and risk tolerance;
- 7 • Provide participants with the right to transfer among investment options with  
8 sufficient frequency, commensurate with the volatility of the investments;
- 9 • Choose a flexible administrative platform with access to investment options that  
10 have reasonable total costs to participants, and which offer competitive returns  
11 for the risks assumed; and
- 12 • Select and retain investment managers/funds with strong, disciplined  
13 investment capabilities, consistent application of investment strategy, stable  
14 portfolio management teams, and a demonstrated record of strong performance  
15 to manage the investment options.

16 2006 Statement at 2. The 2006 Statement further dictates that the Investment Committee  
17 has the responsibility to:

- 18 • Identify [sic] appropriate investment asset classes and select funds within those  
19 classes;
- 20 • Develop, review and revise the Plan's Investment Policy Statement;
- 21 • Hire and remove fund managers and consultants;
- 22 • Evaluate fund managers and performance at least quarterly;
- 23 • Evaluate consultants' performance and fees no less frequently than every other  
24 year;
- 25 • Monitor recordkeeping and investment fees at least annually; and
- 26 • Meet at least quarterly to review the Plan's funds and performance.

27 *Id.* at 3.

28

1 87. When adding or replacing an investment option, the 2006 Statement  
2 provides that the Investment Committee shall consider various factors including the  
3 experience of investment professionals; stability of ownership; consistent portfolio  
4 characteristics/ investment style; demonstrated record of favorable performance on a net  
5 of fee basis when compared to relevant market indices, relevant peer groups, and when  
6 adjusted for risk; and an approach providing adequate diversification to protect against  
7 loss associated with single security, issuer or event. *Id.* at 9.

8 88. Moreover, the Investment Committee is required to review the investment  
9 managers and fund providers at least quarterly based on relevant criteria such as:  
10 adherence to guidelines; relative results as compared with a universe of like managers;  
11 etc. *Id.* As part of this function, the Investment Committee was required to discontinue  
12 investment options which exhibited poor or inconsistent risk management; loss of key  
13 investment professionals; significant or intentional breach of mandate or directive;  
14 underperformance measured over a reasonable time period given the specific  
15 circumstances of the fund's investment strategy. *Id.* at 10.

16 89. Consequently, in light of the foregoing duties, responsibilities, and actions,  
17 the Investment Committee Defendants were both named fiduciaries of the Plan pursuant  
18 to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), and *de facto* fiduciaries within the  
19 meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that they exercised discretionary  
20 authority or discretionary control respecting management of the Plan, exercised authority  
21 or control respecting management or disposition of the Plan's assets, and/or had  
22 discretionary authority or discretionary responsibility in the administration of the Plan.

## 23 VII. FACTS BEARING ON FIDUCIARY BREACH

### 24 A. Countrywide Was an Imprudent Investment for the Plan during the Class 25 Period Because of its Serious Mismanagement, Precipitous Decline in the 26 Price of its Stock and Dire Financial Condition.

#### 26 1. Summary.

27 90. During the Class Period, Countrywide stock became an imprudent  
28 investment for participants' retirement savings because of, *inter alia*, the Company's

1 highly risky, inappropriate and potentially unlawful origination practices and serious  
2 financial mismanagement which caused the value of Countrywide stock to be artificially  
3 inflated and exposed the Plan to huge losses as a result of such circumstances.

4 91. Countrywide's inappropriate and potentially unlawful origination practices  
5 and serious mismanagement pertains to, among other problems, Countrywide's (1)  
6 predatory and highly risky lending practices; (2) lack of adequate internal controls over  
7 its improper lending practices contributing to high delinquency and foreclosure rates  
8 among borrowers; and (3) misleading statements and misrepresentations regarding the  
9 Company's financial condition which caused the price of Countrywide stock to be  
10 artificially inflated during the Class Period. In short, during the Class Period, the  
11 Company was seriously mismanaged, engaged in potentially unlawful conduct regarding  
12 which government investigations have been initiated, and faced dire financial  
13 circumstances as a result of the aforementioned circumstances. Accordingly, investment  
14 in Countrywide stock under these circumstances was imprudent and caused the Plan to  
15 suffer enormous losses.

## 16 **2. The Rise of the Subprime Lending Industry.**

17 92. Countrywide, like the mortgage industry as a whole, saw rapid growth in its  
18 origination of subprime loans in recent years. Between 2003 and 2005, Countrywide's  
19 production of subprime loans doubled, from \$19.8 billion to \$44.6 billion. Annual  
20 Report (Form 10-K) at 3 (Dec. 31, 2006) (hereinafter the "2006 Form 10-K").

21 93. The proliferation of subprime loans has been attributed by many industry  
22 experts to a confluence of factors that occurred in 2004 and 2005, including rising home  
23 prices, declining affordability, historically low interest rates, intense lender competition,  
24 innovations in the structure and marketing of mortgages, and an abundance of capital  
25 from lenders and mortgage securities investors. See Sandra L. Thompson, Dir., Div. of  
26 Supervision and Consumer Prot., *Testimony Before the Committee on Banking, Housing*  
27 *and Urban Affairs, U.S. Senate: Federal Deposit Insurance Corporation on Mortgage*  
28 *Market Turmoil: Causes and Consequences*, Mar. 22, 2007, available at

1 <http://www.fdic.gov/news/news/speeches/chairman/spmar22071.html>.

2 94. Upon information and belief, in 2004, as interest rates began to climb, the  
3 pool of potential prime borrowers looking to refinance began to dry up and lenders began  
4 extending loans to subprime borrowers with troubled credit histories in an effort to  
5 maintain or grow market share in a declining origination environment.

6 95. In order to take advantage of this new market, lenders began weakening their  
7 underwriting standards, including:

8 (a). reducing the minimum credit score borrowers need to qualify for  
9 certain loans;

10 (b). allowing borrowers to finance a greater percentage of a home's value  
11 or to carry a higher debt load;

12 (c). introducing new products designed to lower borrowers' monthly  
13 payments for an initial period; and

14 (d). allowing borrowers to take out loans with little, if any, documentation  
15 of income and assets.

16 *See Ruth Simon, Mortgage Lenders Loosen Standards – Despite Growing Concerns,*  
17 *Banks Keep Relaxing Credit-Score, Income and Debt-Load Rules, Wall St. J., July 26,*  
18 *2005, at D1.*

19 96. In addition to lowering underwriting standards, lenders began offering novel  
20 loan products to entice borrowers which put them at greater risk of defaulting:

21 (a). **No-documentation and low-documentation loans:** Known in the  
22 industry as “liar loans,” the practice of requiring little or no documentation  
23 from borrowers constituted as much as 40 percent of subprime mortgages  
24 issued in 2006, up from 25 percent in 2001. *See Gretchen Morgenson,*  
25 *Crisis Looms In Mortgages, N.Y. Times, Mar. 11, 2007.*

26 (b). **Piggy-back loans:** These combine a mortgage with a home-equity  
27 loan or line of credit, allowing borrowers to finance more than 80 percent of  
28 the home's value without paying for private mortgage insurance. As of

1 2006, about half of all subprime loans included “piggyback” loans, and on  
2 average all borrowers financed 82 percent of the underlying value of their  
3 property, markedly up from 48 percent in 2000. *See Id.*; James R. Hagerty  
4 & Ruth Simon, *Home Lenders Pare Risky Loans – More Defaults Prompt*  
5 *Cut in ‘Piggyback’ Mortgages; Housing Market May Suffer*, Wall St. J.,  
6 Feb. 14, 2007, at A3.

7 (c). **Interest-only mortgages:** These allow borrowers to pay interest and  
8 no principal in the loan’s early years, which keep payments low for a time,  
9 but require that the deferred payment of principal be made in the future  
10 through increased monthly or balloon payments.

11 (d). **Option adjustable-mortgages:** The most prevalent of which are  
12 hybrid adjustable rate mortgages (“ARMs”), the loans are marketed with  
13 promotional or “teaser” rates during the loan’s introductory period that later  
14 balloon to much higher rates once the introductory period has ended. ARMs  
15 currently account for between one-half and one-third of subprime  
16 mortgages. *See* Testimony of Roger T. Cole, Director, Division of Banking  
17 Supervision and Regulation, The Federal Reserve Board, *Mortgage Markets*,  
18 Before the Committee on Banking, Housing and Urban Affairs, U.S. Senate,  
19 Mar. 22, 2007, available at [http://www.federalreserve.gov/boarddocs/  
20 testimony/2007/20070322/default.htm](http://www.federalreserve.gov/boarddocs/testimony/2007/20070322/default.htm).

### 21 **3. The Fall of the Subprime Lending Industry.**

22 97. As early as 2004, industry watchdogs began expressing growing fears that  
23 relaxed lending practices were increasing risks for borrowers and lenders in overheated  
24 housing markets. *See* Simon, *Mortgage Lenders, supra*. As lenders were making it  
25 easier for borrowers to qualify for a loan by such practices as described above, they were  
26 also greatly increasing the likelihood that borrowers would be unable to make payments,  
27 and that defaults would rise. Of particular concern was the prevalence of adjustable-rate  
28 loans, which in combination with the lowered lending standards, were more likely to

1 result in borrowers' early payment defaults.

2 98. In May 2005, bank regulators issued their first-ever guideline for credit-risk  
3 management for home-equity lending and, in December 2005, new guidelines for  
4 mortgage lenders were issued as well. *Id.*; Testimony of Sandra L. Thompson, *supra*.  
5 The proposed "Interagency Guidance on Nontraditional Mortgage Product Risks" sent a  
6 clear message to the marketplace that bank regulators were concerned about the lessened  
7 underwriting standards and general lax risk management practices of subprime lenders.

8 99. As of mid-2005, delinquency rates for subprime loans (60-days or more past  
9 due) rose for the first time since 2002. By the fourth quarter of 2005, delinquencies and  
10 foreclosures began to rise even more severely -- as of October 2005 the delinquency rate  
11 was twice that recorded on new subprime loans a year earlier. *See* Simon & Hagerty,  
12 *More Borrowers, supra*.

13 100. According to the FDIC, total subprime delinquencies rose from 10.33  
14 percent in the fourth quarter of 2004 to 13.33 percent in the fourth quarter of 2006 and  
15 foreclosures rose from 1.47 percent to 2.0 percent over the same period. Testimony of  
16 Sandra L. Thompson, *supra*.

17 101. Subprime loans with ARMs accounted for the largest rise in delinquency  
18 rates, an increase from 9.83 percent to 14.44 percent between the fourth quarter of 2004  
19 and the fourth quarter of 2006; whereas foreclosures rose from 1.5 percent to 2.7 percent  
20 during the same period. *Id.*

21 102. In 2006 alone, roughly 80,000 subprime borrowers fell into delinquency,  
22 many shortly after origination. *See* Simon & Hagerty, *More Borrowers, supra*.

23 103. In short, the rate of delinquency and foreclosure suggests that lenders  
24 underestimated the risk involved and borrowers did not fully understand the full costs of  
25 these loans.

26  
27  
28

1 **B. Countrywide Engaged in Risky and Inappropriate Subprime Lending**  
2 **Practices and Serious Mismanagement.**

3 104. Despite the many warnings issued by industry analysts and government  
4 regulators, as well as other negative indicators, such as rising interest rates and a cooling  
5 housing market, for much of the Class Period, Countrywide continued to engage in risky,  
6 inappropriate and potentially unlawful lending practices and to make inaccurate  
7 prognostications about its financial future.

8 **1. Countrywide's Aggressive Lending Practices.**

9 105. In August 2007, *The New York Times* revealed that Countrywide had  
10 engaged in predatory lending practices by steering borrowers to risky subprime loans  
11 with unfavorable terms in order to generate greater profits for the Company:

12 On its way to becoming the nation's largest mortgage lender, the  
13 Countrywide Financial Corporation encouraged its sales force to court  
14 customers over the telephone with a seductive pitch that seldom  
15 varied. 'I want to be sure you are getting the best loan possible,' the  
16 sales representatives would say.

17 But providing 'the best loan possible' to customers wasn't always the  
18 bank's main goal, say some former employees. Instead, potential  
19 borrowers were often led to high-cost and sometimes unfavorable  
20 loans that resulted in richer commissions for Countrywide's smooth-  
21 talking sales force, outsize fees to company affiliates providing  
22 services on the loans, and a roaring stock price that made  
23 Countrywide executives among the highest paid in America.

24 Countrywide's entire operation, from its computer system to its  
25 incentive pay structure and financing arrangements, is intended to  
26 wring maximum profits out of the mortgage lending boom no matter  
27 what it costs borrowers, according to interviews with former  
28

1 employees and brokers who worked in different units of the company  
2 and internal documents they provided. One document, for instance,  
3 shows that until last September the computer system in the company's  
4 subprime unit excluded borrowers' cash reserves, which had the effect  
5 of steering them away from lower-cost loans to those that were more  
6 expensive to homeowners and more profitable to Countrywide.

7 Gretchen Morgenson, *Inside the Countrywide Lending Spree*, N.Y. Times, Aug. 26,  
8 2007.

9 106. Many of the loans Countrywide forced on uninformed borrowers contained  
10 unfavorable terms such as teaser interest rates which were reset to double digits after the  
11 teaser period expired, while others carried prohibitive prepayment penalties that made  
12 refinancing impossibly expensive. *Id.*

13 107. Upon information and belief, Countrywide incentivized its brokers to market  
14 these unfavorable terms by offering them extra commissions if they did so. *Id.* For  
15 example, upon information and belief, brokers could earn equal to 1 percent of the loan's  
16 value if they added a three-year prepayment penalty to the loan. *Id.* In addition, upon  
17 information and belief, brokers could earn higher commissions for building higher reset  
18 rates into the adjustable rate loans after the teaser period expired. *Id.*

19 108. Upon information and belief, Countrywide made such loans because the  
20 Company's profit margin from the securitization and sale of these loans in the secondary  
21 market was greater and thus the company's commission structure rewarded sales  
22 representatives for making risky, high-cost loans.

23 109. However, Countrywide's business model, which prioritizes fees and  
24 commissions over financial viability of loans, has resulted in massive delinquencies in its  
25 subprime loans and has compromised the financial circumstances of the Company. 20.15  
26 percent of subprime loans made by Countrywide were delinquent as of June 30, 2007, up  
27 from 14.41 percent in the same period the preceding year. *Id.*; Countrywide Financial  
28 Corp. Quarterly Report (Form 10-Q) (June 30, 2007) at 92. Moreover, almost 10 percent

1 of subprime mortgages were delinquent by 90 days or more compared with the previous  
2 year's rate of 5.35 percent. Morgenson, *Inside the Countrywide Lending Spree*, *supra*.  
3 At the end of 2006, delinquencies for Countrywide's subprime loans had increased to  
4 19.03 percent, up 25 percent from the previous year's rate (15.20 percent) and up more  
5 than 68 percent from the delinquency rate in 2004 (11.29 percent). 2006 Form 10-K at 9.  
6 As of the third quarter of 2007, 450,000, or 5 percent of Countrywide's nearly nine  
7 million mortgages are delinquent. Gretchen Morgenson, *Can These Mortgages Be*  
8 *Saved?*, N.Y. Times, Sept. 30, 2007.

9 110. Countrywide's unscrupulous lending practices are currently the subject of a  
10 U.S. Senate panel investigating the current housing and mortgage crisis. In a recent press  
11 conference the panel's chair, Senator Charles Schumer, noted in amazement that 40  
12 percent of subprime loans facing foreclosure could have qualified as prime-rate loans.  
13 John Godfrey, *Schumer Tells Countrywide to End Lending Practices*, Wall St. J., Aug.  
14 29, 2007. Senator Schumer called on Countrywide to end "its bad business practices and  
15 reverse some the damage it has already inflicted on our housing market." *Press*  
16 *Conference with Senator Charles Schumer (D-NY): Countrywide and Subprime Loans*,  
17 Fed. News Service, Aug. 29, 2007, available at [http://text.fednews.com/  
18 transcript.htm?id=20070829t0480&query=schumer&SLID=83ea7d275d2a0272eec4f753  
19 84376875](http://text.fednews.com/transcript.htm?id=20070829t0480&query=schumer&SLID=83ea7d275d2a0272eec4f75384376875).

## 20 **2. Countrywide Continued to Offer Subprime Loans Despite the High** 21 **Risk of Default or Foreclosure.**

22 111. For much of the Class Period, Countrywide continued to extend subprime  
23 loans to borrowers which contained many of the weakened lending terms discussed in  
24 Section VII. A.2, *supra*. Countrywide's aggressive marketing of these loans resulted in  
25 massive increases in loan delinquencies and foreclosures and put the financial health of  
26 the Company in jeopardy.

27 112. Between 1999 and 2003, fixed-rate loans accounted for 82-95 percent of  
28 loans originated by Countrywide. See Gretchen Morgenson & Geraldine Fabrikant,

1 *Countrywide's Chief Salesman and Defender*, N.Y. Times, Nov. 11, 2007. In 2004,  
2 Countrywide altered its loan mix significantly: ARMs accounted for 49 percent of the  
3 Company's business, up from 18 percent in 2003. *Id.* Countrywide's subprime loan  
4 business also grew as a percentage of total originations: from 4.6 percent in 2003 to 11  
5 percent in 2004. *Id.*

6 113. By 2006, Countrywide ranked as one of the largest subprime lender in the  
7 country -- originating \$40.5 billion in subprime mortgage loans. 2006 Form 10-K at 3;  
8 *See* Nat'l Mortgage News Online, available at <http://data.nationalmortgagenews.com>.  
9 And again, for the first quarter of 2007, the Company ranked as both the number one  
10 subprime originator *and* the number one subprime servicer. *See* Nat'l Mortgage News  
11 Online, *supra*.

12 114. In early 2007, the result of Countrywide's aggressive and risky origination  
13 practices were revealed when, as discussed at ¶ 109 *supra*, the Company issued its  
14 Annual Report, detailing the marked increase in delinquencies and loan foreclosures for  
15 the subprime loans the Company was servicing.

16 115. Countrywide also reported that foreclosures for subprime loans increased to  
17 3.53 percent, more than doubling the rate of 1.74 percent in 2004. 2006 Form 10-K at 9.  
18 Countrywide's loans pending in foreclosure comprised 0.65 percent of its total loans in  
19 2006, up from 0.44 percent in 2005 and 0.42 percent in 2004. *Id.*

20 116. However, it was not until late February 2007 that Countrywide began to  
21 tighten up its origination terms. For instance, the Company continued to originate loans  
22 comprising more than 95 percent of a home's appraised value and required no  
23 documentation of a borrower's income until February 23, 2007. *See* Gretchen  
24 Morgenson, *Inside the Countrywide Lending Spree*, N.Y. Times, Aug. 26, 2007.

25 117. And it was not until March 2007, that Countrywide instructed its brokers to  
26 stop offering borrowers the option of no-money-down home loans, or "piggyback" loans,  
27 which were responsible for a steep rise in delinquencies. In a Company email  
28 Countrywide told its loan originators: "Please get in any deals over 95 LTV (loan-to-

1 value) today!... Countrywide BC will no longer be offering any 100 LTV products as of  
2 Monday, March 12.” *Countrywide Ends No Down-Payment Lending*, Reuters, Mar. 9,  
3 2007.

4 118. Moreover, as recently as July 27, 2007, Countrywide’s product list showed  
5 that it would lend \$500,000 to a borrower rated C-, the second riskiest grade. As long as  
6 the loan represented no more than 70 percent of the property’s underlying value, the  
7 Company would lend to a borrower with a credit score as low as 500. Morgenson, *Inside*  
8 *the Countrywide Lending Spree*, *supra*. In fact, the Company would lend even if the  
9 borrower had been 90 days late on a current mortgage payment twice in the last 12  
10 months, if the borrower had filed for personal bankruptcy protection, or if the borrower  
11 had faced foreclosure or default notices on his or her property. *Id.*

12 119. Finally, in mid-August 2007, after Countrywide’s stock had lost  
13 approximately 40 percent of its value since the beginning of the Class Period, the  
14 Company announced that it would make significant changes to its operations by limiting  
15 itself to mortgages which can be bought by government-backed agencies, Freddie Mac  
16 and Fannie Mae. Vikas Bajaj, *Big Changes and Big Loan for Lender*, N.Y. Times, Aug.  
17 17, 2007. The effort to clean up its act, however, came too late to prevent massive losses  
18 to the Plan caused by the investment in Countrywide stock.

19 **3. Countrywide Failed to Sufficiently Reserve for Various Liabilities and**  
20 **Obligations Related to Mortgages that it Securitized or Sold.**

21 120. Countrywide retains subordinated interests in mortgages that it securitizes  
22 and makes representations to buyers about performance and other characteristics of  
23 mortgages that it sells. The Company’s Annual Report for 2006 reveals that  
24 Countrywide underreserved for credit risk arising from its retained subordinated interests  
25 and understated liabilities arising from representations it made regarding sold mortgages.

26 121. For instance, from 2005 to 2006 the Company increased its recorded  
27 reserves and liabilities at a rate much faster than the rate of increase of the related assets  
28 or revenue. And from December 31, 2005 to December 31, 2006, the value of

1 Countrywide's subordinated interests increased 16 percent, to \$2.0 billion; during the  
2 same period, its allowance for credit losses increased more than twice as much, by 36  
3 percent to \$269.2 million. 2006 Form 10-K at 46.

4 122. Also during the same period, Countrywide's loan sales *decreased* two  
5 percent to \$403 billion, while its liability for related representations and warranties  
6 *increased* by 108 percent to \$390.2 million. 2006 Form 10-K at 45, 46.

7 123. Similarly, while Countrywide's revenue from gain on sale of loans increased  
8 approximately 17 percent during the period to \$4.7 billion, its reserves for losses arising  
9 from gains on sale increased more than 300 percent, to \$290.4 million from \$66.5  
10 million. 2006 Form 10-K at F-20-F-21. This increase in 2006 of the accumulation of  
11 liabilities or reserves for activities that occurred in past periods caused Countrywide's  
12 stock price to be artificially inflated during the Class Period.

13 **4. Countrywide Failed to Provide Complete and Accurate Information to**  
14 **Participants Regarding the Excessive Risks of the Investment.**

15 124. During much of the Class Period, Countrywide, and in particular Defendant  
16 Mozilo, provided incomplete and inaccurate information regarding the financial  
17 circumstances of the Company to Plan participants and the market as a whole.

18 125. On January 31, 2006, Countrywide announced results for the quarter and  
19 year ended December 31, 2005, touting its impressive growth including quarterly and  
20 2005 net earnings of \$639 million and \$2.5 billion, respectively, compared to \$370  
21 million and \$2.2 billion for the comparable periods in 2004. Defendant Mozilo boasted  
22 that:

23 Importantly, we achieved these results despite an environment that  
24 included volatile interest rates; declining production profit margins  
25 throughout the industry; and the adverse effects of 2005's hurricanes,  
26 primarily Hurricane Katrina. If not for the hurricane charges, the  
27 Company would have surpassed its record of \$4.18 per diluted share,  
28 achieved in the peak refinance boom year of 2003. Countrywide's

1 exceptional performance in the 2005 environment is a reflection of the  
2 Company's ability to generate organic market share growth in its  
3 Mortgage Banking segment, and of the effective implementation of its  
4 strategy to expand its other business segments.'

5 \*\*\*

6 As we look ahead to 2006 and beyond, we expect to see the market  
7 transition continue, which should lead to substantial industry  
8 consolidation. In the past, Countrywide has benefited from  
9 consolidating environments by recruiting talented personnel and  
10 fortifying our infrastructure. Just as we have done for nearly four  
11 decades, we expect to emerge from challenging times as a stronger  
12 Company that is better positioned for the future. We continue to  
13 believe the long-term fundamentals of the housing and mortgage  
14 finance markets are strong as homeownership remains the foundation  
15 of the American dream. Shareholders should take comfort in knowing  
16 that Countrywide's workforce of more than 50,000 will continue to  
17 work toward making this dream available to all Americans.'

18 Countrywide Financial Corp., Current Report (Form 8-K) (Jan. 31, 2006).

19 126. On February 9, 2006, Countrywide issued a press release touting its  
20 continued growth, including operational results for January 2006 which announced that  
21 Countrywide had been named the number one mortgage originator and servicer for 2005  
22 by an industry group and had increased its origination share by more than 3 percentage  
23 points from 2004 to reach 15.7 percent and widened its lead as the number one originator.  
24 Countrywide Financial Corp., Current Report (Form 8-K) (Feb. 9, 2006).

25 127. On March 9, 2006, Countrywide issued a press release touting its positive  
26 operational results for February 2006 which reflected "across-the-board growth compared  
27 to February 2005." Countrywide Financial Corp., Current Report (Form 8-K) (Mar. 9,  
28 2006).

1           128. On April 11, 2006, Countrywide issued a press release touting its positive  
2 operational results for March 2006, including a growth in mortgage loan fundings of \$40  
3 billion, up 10 percent year-over-year and 29 percent over the prior month. Moreover, the  
4 Company reported that for the first quarter of 2006, mortgage loan fundings were up 13  
5 percent over the first quarter of 2005 and refinance volume remained high, accounting for  
6 55 percent of the first quarter's production. Countrywide Financial Corp., Current Report  
7 (Form 8-K) (Apr. 11, 2006).

8           129. On April 27, 2006 Countrywide a issued a press release touting its positive  
9 earnings for the first quarter, including net quarterly earnings of \$684 million and diluted  
10 earnings per share were \$1.10, as compared to \$689 million in net earnings and \$1.13 in  
11 diluted earnings per share for the first quarter of 2005, and \$639 million in net earnings  
12 and \$1.03 in diluted earnings per share for the fourth quarter of 2005. Defendant Mozilo  
13 explained that these results were achieved “[d]espite the challenges created by this  
14 environment” and demonstrated the “effectiveness of [Countrywide’s] time-tested  
15 business model, our focus on mortgage lending and the continued diversification of our  
16 earnings base.” Countrywide Financial Corp., Current Report (Form 8-K) (Apr. 27,  
17 2006). He remarked further that “we remain confident in Countrywide’s position within  
18 the industry. We will continue to capitalize upon consolidation and other industry  
19 dynamics to grow market share, enhance our infrastructure and create greater shareholder  
20 value.” *Id.*

21           130. On July 13, 2006, Countrywide issued a press release announcing slowing in  
22 the mortgage loan production market as compared to the prior year, but touted its  
23 operational results as compared to the industry-wide rate of origination:

24           ‘Countrywide’s mortgage loan production results for the month of  
25 June and the second quarter of 2006 reflected the year-over-year  
26 slowdown in activity across the industry,’ said Stanford L. Kurland,  
27 President and Chief Operating Officer. ‘While the Company’s total  
28 mortgage loan fundings for the second quarter of 2006 declined by 3

1 percent year-over-year, they were up 13 percent from the first quarter  
2 of 2006, reflecting seasonal improvement. This compared positively  
3 to the industry, where industry origination volume for the second  
4 quarter of 2006 was estimated by various industry sources to decline,  
5 on average, by approximately 13 percent year-over-year. In addition,  
6 compared to last month, mortgage loan fundings and average daily  
7 applications increased. The mortgage pipeline also remains strong at  
8 \$65 billion, matching last month and indicative of near-term strength  
9 in funding volume for Countrywide.’

10 Countrywide Financial Corp., Current Report (Form 8-K) (July 13, 2006).

11 131. On July 24, 2006, Countrywide issued a press release touting its positive  
12 results for the second quarter, including “a 25 percent year-over-year growth in diluted  
13 earnings per share for the second quarter despite a 121 basis point rise in the 10-Year  
14 U.S. Treasury yield and a 3 percent decline in our total loan funding volume.”  
15 Countrywide Financial Corp., Current Report (Form 8-K) (July 24, 2006). Defendant  
16 Mozilo, explained:

17 This demonstrated the power of our business model, as the strategic  
18 counterbalancing of our Production and Servicing sectors fueled  
19 positive results in our Mortgage Banking segment. The ongoing  
20 growth initiatives in our other businesses are providing significant  
21 value to the consolidated franchise. Together, these activities help  
22 position the Company as a strong performer over the long term in a  
23 wide range of interest rate environments.

24 *Id.*

25 132. On August 9, 2006, Countrywide issued a press release announcing a decline  
26 in its operational results for July 2006, which stated in part:

27  
28

- 1 • Mortgage loan fundings for the month of July were \$36 billion, a  
2 decrease of 19 percent from July 2005. Year-to-date fundings of \$256  
3 billion were essentially flat as compared to last year.
- 4 • Monthly purchase volume in July was \$17 billion as compared to  
5 \$21 billion for July 2005. Year-to-date purchase activity of \$119  
6 billion was down 3 percent from last year.
- 7 • Adjustable-rate loan fundings for the month of July were \$17  
8 billion, a decline of 27 percent from July 2005. Year-to-date  
9 adjustable-rate volume was \$125 billion, down 10 percent from last  
10 year.
- 11 • Average daily mortgage loan application activity in July was \$2.5  
12 billion, a decrease of 15 percent from last year. The mortgage loan  
13 pipeline was \$62 billion at July 31, 2006 as compared to \$77 billion at  
14 July 31, 2005.

15 Defendant Kurland, attributed the results in residential mortgage loan production to  
16 current market conditions, including the slowed pace of home sales. Countrywide  
17 Financial Corp., Current Report (Form 8-K) (Aug. 9, 2006).

18 133. On September 14, 2006, Countrywide again issued a press release  
19 announcing a decline in its operational results for the previous month, August 2006, as  
20 compared to the prior year. Defendant Mozilo attributed these results to the “expected  
21 industry slowdown.” Countrywide Financial Corp., Current Report (Form 8-K) (Sept.  
22 14, 2006).

23 134. On October 24, 2006, Countrywide announced, “In response to changing  
24 market conditions, management has initiated an expense and headcount reduction  
25 program. By year end, we expect that this program will generate an annualized cost  
26 savings run rate of over \$500 million.” The Company also announced:

1 We anticipate the fourth quarter of 2006 will be characterized by a  
2 continued slowdown in purchase volume beyond typical seasonality.  
3 However, should interest rates remain at their current levels or move  
4 lower, we expect that increased refinance activity will mitigate this  
5 decline. We also continue to expect that margins will remain under  
6 pressure and that pricing will remain competitive as the mortgage  
7 market consolidates. In addition, pay-option loans - which have  
8 historically provided higher margins - are declining as a percentage of  
9 total production and have experienced margin erosion, and this trend  
10 may continue.

11 Countrywide Financial Corp., Current Report (Form 8-K) (Oct. 24, 2006).

12 135. On March 12, 2007, Countrywide issued a press release announcing a  
13 further decline in its operational results for February 2007 which stated in part:

14 The nonprime lending industry is currently experiencing significant  
15 volatility and instability. . . . As a result, many nonprime competitors  
16 have recently exited the market and other lenders have suggested their  
17 continued viability is in question. Aggressive industry underwriting  
18 guidelines and lower home price appreciation have resulted in  
19 increasing delinquencies and defaults. Furthermore, as a result of  
20 investor concerns about nonprime loan performance, yield  
21 requirements have increased and secondary market liquidity has been  
22 reduced. These factors will adversely impact residual valuations and  
23 gains on sale of nonprime loans until market conditions improve.'

24  
25 'In response to market factors, management has implemented changes  
26 to our origination policies to mitigate future exposure including  
27 further tightening of underwriting guidelines. Nonprime fundings  
28 were only 7 percent of total mortgage loan fundings in February and

1 recent nonprime application volumes have declined as a result of our  
2 recent policy changes. At December 31, 2006, our nonprime residuals  
3 amounted to \$402 million, which represents 0.2 percent of the  
4 Company's assets.

5 Management views that the long term impact of the current nonprime  
6 market dynamics is positive for both the industry and  
7 Countrywide. . . . The industry should benefit from more rational  
8 underwriting and pricing as excess lending capacity is eliminated.  
9 Countrywide is well positioned to take advantage of this market  
10 disruption due to its experience, operating controls, strong liquidity  
11 profile and relatively low exposure to nonprime. Nonetheless, the  
12 Company may experience short term earnings volatility during this  
13 transition period.

14 Countrywide Financial Corp., Current Report (Form 8-K) (Mar 12, 2007).

15 136. On April 26, 2007, Countrywide announced the Company's earnings results  
16 for the first quarter. Defendant Mozilo explained that "[w]hile the Company's core  
17 operations delivered what was otherwise a strong quarter, earnings were impacted by  
18 charges relating to our subprime activities as well as increases to our loss reserves and  
19 related asset valuation adjustments stemming from higher delinquencies and softer  
20 housing markets." Countrywide Financial Corp., Current Report (Form 8-K) (Apr. 26,  
21 2007). In addition, the announcement provided the following outlook for 2007:

22 Management believes that considerable risks remain in the mortgage  
23 marketplace, including but not limited to potential further  
24 deterioration in the housing market that could impact origination  
25 volume and future credit costs; potential pending regulatory or  
26 legislative actions that could impose constraints on our operations;  
27 and other business risks as outlined in the disclaimer at the end of this  
28 press release. While the balance of 2007 is expected to be challenging,

1 management continues to believe that current market conditions will  
2 result in opportunities in the form of further industry consolidation.  
3 Management also believes that the Company is well-positioned to  
4 capitalize upon these opportunities, which should strengthen  
5 Countrywide's franchise and result in accelerated future market share  
6 and earnings growth.

7 *Id.*

8 137. On June 12, 2007, Countrywide issued a press release touting its positive  
9 operational results for May 2007, including "a 17 percent increase in home purchase  
10 activity from the prior month." Countrywide Financial Corp., Current Report (Form 8-K)  
11 (June 12, 2007). President and Chief Operating Officer David Sambol attributed the  
12 results to "[Countrywide's] focus on integrating the activities of our Bank and mortgage  
13 company, Countrywide Bank funded \$19 billion, or 44 percent, of total residential  
14 mortgage production during the month of May 2007, its highest monthly amount to date."

15 *Id.* Moreover, the Company announced that according to *Inside Mortgage Finance*, it  
16 had retained its position as the number one mortgage originator in all channels for the  
17 first quarter of 2007. *Id.*

18 138. On July 16, 2007, Countrywide issued a press release announcing  
19 operational results for June 2007 which stated in part:

20 'Market conditions became increasingly challenging throughout the  
21 second quarter of 2007,' said David Sambol, President and Chief  
22 Operating Officer. 'The housing market continues to soften, and  
23 delinquencies and defaults continue to rise. Additionally, interest  
24 rates, price competition in the residential lending markets and  
25 secondary market volatility have all increased. However,  
26 Countrywide's residential funding volume in June was strong, driven  
27 primarily by seasonal purchase activity and higher application  
28 volumes in preceding months.'

1 Countrywide Financial Corp., Current Report (Form 8-K) (July 16, 2007).

2 139. Countrywide's announcements were attempts by the Company to hide the  
3 truth regarding upcoming impairment charges and drastic need for an infusion of cash.  
4 Rather than disclose that Company stock had become an imprudent investment for the  
5 Plan, Defendants continued to make optimistic statements about the Company's future  
6 and, in particular, continued to make Employer Matching Contributions in Company  
7 stock and allow Company stock to remain an investment option in the Plan.

8 **5. Countrywide's Financial Problems Come to Light.**

9 140. In July 2007, it became abundantly clear that Countrywide had ignored  
10 warnings regarding the risks of the subprime lending industry and that this failure was  
11 leading to the Company's financial demise.

12 141. On July 24, 2007, Countrywide announced that it had taken impairment  
13 charges of \$417 million during the second quarter on the Company's investments in  
14 credit-sensitive retained interests. The impairment included:

15 \$388 million, or approximately \$0.40 in earnings per diluted share  
16 based on a normalized tax rate, of impairment on residual securities  
17 collateralized by prime home equity loans. The impairment charges on  
18 these residuals were attributable to accelerated increases in  
19 delinquency levels and increases in the estimates of future defaults  
20 and loss severities on the underlying loans.

21 Countrywide Financial Corp., Current Report (Form 8-K) (July 24, 2007).

22 142. As a result of these developments, the Company updated its 2007 earnings  
23 estimate. The update cut the earnings estimate to \$2.70 a share from \$3.30, which was  
24 already down from its previous guidance of \$3.50 to \$4.30 a share. *Id.* Upon this news  
25 Countrywide's stock price fell \$3.56 or 10.4 percent, closing at \$30.50 per share, on  
26 unprecedented volume of 51.2 million shares, a loss of over \$1.87 billion in total market  
27 capitalization.

1 143. On August 2, 2007, Countrywide issued a press release entitled:  
2 “Countrywide Comments on Its Strong Funding Liquidity and Financial Condition.” The  
3 press release stated in part:

4 ‘Our mortgage company has significant short-term funding liquidity  
5 cushions and is supplemented by the ample liquidity sources of our  
6 bank. . . . In fact, we have almost \$50 billion of highly-reliable short-  
7 term funding liquidity available as a cushion today. It is important to  
8 note that the Company has experienced no disruption in financing its  
9 ongoing daily operations, including placement of commercial paper.’

10  
11 ‘Countrywide’s financial condition remains strong, as evidenced by  
12 over \$14 billion of net worth, significant excess capital and our strong  
13 investment grade credit ratings. . . . Two independent credit rating  
14 agencies, Moody’s Investors Service and Standard & Poor’s Rating  
15 Service, this week re-affirmed their ratings and stable outlook for  
16 Countrywide, its bank and its mortgage company.’

17 *Countrywide Comments on Its Strong Funding Liquidity and Financial Condition,*  
18 PR Newswire (Aug. 2, 2007).

19 144. On August 6, 2007, Countrywide detailed the Company’s liquidity sources  
20 in an unprecedented disclosure. Upon release of these disclosures, the price of  
21 Countrywide rose 7.0 percent or \$1.75, closing at \$26.75, on volume of 50.5 million  
22 shares. Countrywide Financial Corp., Current Report (Form 8-K) (Aug. 6, 2007).

23 145. On August 9, 2007, after the close of the markets, Countrywide issued its  
24 second quarter results and disclosed the Company’s significant financing needs which  
25 contradicted its statement one week earlier that the Company’s financial situation  
26 remained strong and raised questions about the short-term sufficiency and reliability of  
27 the reserves presented in its August 6, 2007 Form 8-K. The Form 10-Q filed August 9,  
28 2007 stated in part:

1 Item 1A. Risk Factors

2 Item 1A of our 2006 Annual Report presents risk factors that may  
3 impact the Company's future results. In light of recent developments  
4 in the mortgage; housing and secondary markets, those risk factors are  
5 supplemented by the following risk factor:

6 ***Debt and secondary mortgage market conditions could have a***  
7 ***material adverse impact on our earnings and financial condition***

8  
9 We have significant financing needs that we meet through the capital  
10 markets, including the debt and secondary mortgage markets. These  
11 markets are currently experiencing unprecedented disruptions, which  
12 could have an adverse impact on the Company's earnings and  
13 financial condition, particularly in the short term.

14  
15 Current conditions in the debt markets include reduced liquidity and  
16 increased credit risk premiums for certain market participants. These  
17 conditions, which increase the cost and reduce the availability of debt,  
18 may continue or worsen in the future. The Company attempts to  
19 mitigate the impact of debt market disruptions by obtaining adequate  
20 committed and uncommitted facilities from a variety of reliable  
21 sources. There can be no assurance however, that the Company will  
22 be successful in these efforts, that such facilities will be adequate or  
23 that the cost of debt will allow us to operate at profitable levels. The  
24 Company's cost of debt is also dependent on its maintaining  
25 investment-grade credit ratings. Since the Company is highly  
26 dependent on the availability of credit to finance its operations,  
27 disruptions in the debt markets or a reduction in our credit ratings,  
28

1 could have an adverse impact on our earnings and financial condition,  
2 particularly in the short term.

3 The secondary mortgage markets are also currently experiencing  
4 unprecedented disruptions resulting from reduced investor demand for  
5 mortgage loans and mortgage-backed securities and increased investor  
6 yield-requirements for those loans and securities. These conditions  
7 may continue or worsen in the future. In light of current conditions,  
8 we expect to retain a larger portion of mortgage loans and mortgage-  
9 backed securities than we would in other environments. While our  
10 capital and liquidity positions are currently strong and we believe we  
11 have sufficient capacity to hold additional mortgage loans and  
12 mortgage backed securities until investor demand improves and yield  
13 requirements moderate, our capacity to retain mortgage loans and  
14 mortgage backed securities is not unlimited. As a result, a prolonged  
15 period of secondary market illiquidity may reduce our loan production  
16 volumes and could have an adverse impact on our future earnings and  
17 financial condition.  
18

19 Countrywide Financial Corp. Quarterly Report (Form 10-Q) (Aug. 9, 2007)  
20 (emphasis added).

21 146. On August 15, 2007, Countrywide shares sank 13 percent, their biggest one-  
22 day decline since the 1987 stock market crash, on fears that the largest U.S. mortgage  
23 lender could face bankruptcy, spurred by a downgrade of Countrywide stock from a  
24 “Buy” recommendation to “Sell” by Merrill Lynch analyst Kenneth Bruce. Bruce stated  
25 that “[i]f enough financial pressure is placed on Countrywide or if the market loses  
26 confidence in its ability to function properly, then the model can break, leading to an  
27 effective insolvency. . . . If liquidations occur in a weak market, then it is possible for  
28 Countrywide to go bankrupt.” Jonathan Stempel, *Countrywide Plunges on Bankruptcy*

1 *Fear*, Reuters, Aug. 15, 2007.

2 147. The following day, August 16, 2007, Countrywide announced that it had  
3 drawn down its \$11.5 billion credit facility to supplement its funding liquidity position.  
4 According to David Sambol, President and Chief Operating Officer: “Along with  
5 reduced liquidity in the secondary market, funding liquidity for the mortgage industry has  
6 also become constrained.” Countrywide Financial Corp. Current Report (Form 8-K)  
7 (Aug. 16, 2007).

8 148. Analysts characterized Countrywide’s chosen course as a move made in  
9 desperation: “Countrywide said it would tap its \$11.5 billion bank line of credit to  
10 provide liquidity. And tap is the right word, because usually a bank line like this is your  
11 liquidity source of last resort, which you use only when you’re tapped out.” Randall W.  
12 Forsyth, *On Borrowed Time*, Barron’s Online, Aug. 20, 2007.

13 149. Upon news of the downgrade and the announcement that the Company had  
14 drawn down its *entire* credit facility, Countrywide shares tumbled and closed at \$18.95  
15 per share, a decline of 42 percent from the start of the Class Period.

16 150. As of August 17, 2007, Countrywide began laying off employees involved  
17 in loan origination – only two weeks after it reported hiring loan officers from rivals  
18 forced to close shop. James R. Hagerty, *Countrywide Begins Staff Layoffs*, Wall St. J.,  
19 Aug. 20, 2007, at A6.

20 151. On August 22, 2007, Countrywide issued a press release in which the  
21 Company announced that it had received a much needed infusion of cash in the form of a  
22 \$2 billion equity investment from Bank of America. The investment is in the form of a  
23 non-voting convertible preferred security yielding 7.25 percent annually. Under the  
24 terms of the agreement, the security can be converted into common stock at \$18 per  
25 share, with resulting shares subject to restrictions on trading for 18 months after  
26 conversion. Defendant Mozilo, in the Company’s press release, stated in part:

27

28

1 Bank of America's investment in Countrywide represents a vote of  
2 confidence and strengthens our balance sheet, enabling us to position  
3 Countrywide for future growth and success. This transaction benefits  
4 all of Countrywide's constituents, including investors, shareholders,  
5 mortgage customers, deposit holders, business partners and  
6 employees.

7 Countrywide Financial Corp. Press Release, *Countrywide Receives \$2 Billion Strategic*  
8 *Equity Investment From Bank of America*, attached as Exhibit 99.1 to Countrywide  
9 Financial Corp, Current Report (Form 8-K) (Aug. 23, 2007). However, analysts  
10 characterized the agreement as highly *unfavorable* to Countrywide:

11 As it turned out, Bank of America's generous gesture was not entirely  
12 altruistic. In return for the \$2 billion, it got a preferred that paid  
13 7.25%, a much heftier yield than the 2.5% to 3.5% converts issued by  
14 Countrywide a scant three months earlier. Moreover, the preferred  
15 sold to Bank of America is convertible at a surprisingly 20% below  
16 then market price of Countrywide common.

17 Alan Abelson, *Up and Down Wall Street*, Barron's Online, Aug. 27, 2007.

18 152. The investment by Bank of America was supposed to strengthen  
19 Countrywide's financials, but was met with skepticism in the market. "Two billion  
20 dollars from Bank of America is not a lot compared to what they may need," said Stuart  
21 Plesser, an equity analyst at Standard & Poor's in New York. James R. Hagerty and  
22 Karen Richardson, *Why is Countrywide Sliding? It's Unclear, That's the Issue*, Wall St.  
23 J., Aug. 29, 2007.

24 153. On September 7, 2007, Countrywide announced that it would cut up to  
25 12,000 additional jobs, amounting to as much as one-fifth of the Company's workforce.  
26 *Countrywide Announces Plan to Address Changing Market Conditions Including*  
27 *Workforce Reductions*, attached as Exhibit 99.1 to Countrywide Financial Corp, Current  
28 Report (Form 8-K) (Sept. 7, 2007). Countrywide also announced plans to revise its

1 product offerings to include only high quality prime loans or loans that can be sold in the  
2 secondary market. *Id.*

3 154. On September 11, 2007, it was announced that Countrywide had hired  
4 Goldman Sachs Group, Inc. to help it find additional financing for the second time in less  
5 than a month. Steve Dickson, *Countrywide Shares Fall on Report Lender Needs Cash*,  
6 Bloomberg News, Sept. 11, 2007. As a result of this news, Company stock fell 5 percent  
7 to \$16.18, its lowest closing price in four years.

8 155. On September 13, 2007, the Company announced that it had secured an  
9 additional \$12 billion in secured borrowing through new or existing credit lines. Lingling  
10 Wei, *Countrywide Loan Fundings Fall; Lender Lines Up \$12 Billion Credit*, Wall St. J.,  
11 Sept. 13, 2007.

12 156. In November, it was reported that Countywide had been receiving a  
13 substantial infusion of cash from the Federal Home Loan Bank in Atlanta since mid-  
14 August. James R. Hagerty, *Where Countrywide Chief is Finding a Life Preserver*, Wall  
15 St. J., Nov. 26, 2007 at C1. As of September 30, 2007, Countrywide had borrowed \$51.1  
16 billion from the Atlanta bank – an increase of 77 percent from the \$28.8 billion it owed  
17 just three months earlier. *Id.*

18 157. On November 9, 2007, Countrywide issued its third quarter results -- a loss  
19 of \$1.2 billion for the quarter, which included a \$1 billion charge to cover the write-down  
20 or losses on sales of loans and related securities. Countrywide Financial Corp. Quarterly  
21 Report (Form 10-Q) (Nov. 9, 2007). Revenue for the quarter plunged to negative \$50  
22 million from \$2.8 million a year earlier. *Id.* at 2. The Company took a \$718 million loss  
23 on the sale of loans and boosted its loan loss provision to \$934 million from \$38 million a  
24 year earlier. *Id.* Of particular note, some 3.27 percent of Countrywide's conventional  
25 mortgage loans were delinquent as of September 30, up from 2.5 percent in the same  
26 period in 2006. *Id.* at 107. Likewise, 23.94 percent of subprime loans were delinquent,  
27 as compared to 20.15 percent as of June 30, 2007 and 16.93 percent as of September 30,  
28 2006. *Id.*

1           158. On November 9, 2007, further demonstrating Countrywide's dire financial  
2 circumstances and potential collapse, Countrywide also warned that if its credit rating  
3 dropped below its current lowest grade, the company's access to the corporate debt  
4 market would be severely limited. The Form 10-Q filed November 9, 2007 stated in part:

5           The illiquidity in the secondary market for non-conforming loan  
6 originations that comprised 48% our loan production during the first  
7 six months of 2007 removed the expected outlet for these loans in the  
8 Mortgage Banking segment of our mortgage banking operations'  
9 loans. This caused illiquidity in the commercial paper and repurchase  
10 agreement markets that made short-term debt that we normally relied  
11 upon to finance substantial portions of our mortgage loan inventory  
12 unavailable or prohibitively expensive. The sudden development and  
13 convergence of these factors during the third quarter challenged our  
14 ability to finance our loan origination operations without incurring  
15 significant daily refinancing risk. In response to market conditions and  
16 constrained liquidity, Countrywide's debt ratings were downgraded by  
17 the major credit agencies.

18           In response, we modified our funding structure by reducing our  
19 reliance on the public debt and non-agency secondary mortgage  
20 markets. Specifically we took the following actions:

- 21           • we accelerated the integration of our mortgage banking  
22           activities into our bank subsidiary which has more stable  
23           funding and more access to highly reliable sources of funds  
24           which are less dependent on the capital markets during periods  
25           of market stress;
- 26           • we significantly changed our underwriting standards, focusing  
27           the bulk of our current loan production on loans that are  
28           available for direct sale to or securitization into programs

1 sponsored by the government-sponsored agencies (Fannie Mae,  
2 Freddie Mac and Ginnie Mae);

- 3 • we procured other sources of financing, including:
  - 4 ○ drawing the full \$11.5 billion amount of our committed
  - 5 revolving credit facilities established to provide liquidity
  - 6 in the event of a disruption in the commercial paper
  - 7 market;
  - 8 ○ making a private issuance of \$2.0 billion of 7.25%
  - 9 convertible cumulative preferred stock;
  - 10 ○ negotiating \$7.5 billion of committed repurchase
  - 11 facilities, which included renewals of \$2.5 billion of
  - 12 existing uncommitted repurchase facilities;
  - 13 ○ negotiating an increase of \$5.5 billion of an uncommitted
  - 14 but highly reliable repurchase facilities with a
  - 15 government-sponsored enterprise; and
  - 16 ○ implementing an aggressive campaign to attract and
  - 17 retain bank deposits, including significant expansion of
  - 18 our network of financial centers.

19 As previously discussed, the public debt markets are no longer a  
20 practical source of short-term inventory financing owing to the current  
21 illiquidity in that market, our current short-term credit ratings and our  
22 recent operational liquidity challenges. While we have procured other,  
23 more stable sources of funding, future access to the public corporate  
24 debt markets remains an important potential source of financing to us  
25 when market conditions permit.

26 *To retain access to the public debt markets it is critical for us to*  
27 *maintain investment-grade credit ratings. Among other things,*  
28

1 *maintenance of our current investment-grade ratings requires that*  
2 *we have high levels of liquidity, including access to alternative*  
3 *sources of funding such as deposits and committed lines of credit*  
4 *provided by highly rated banks. We must also maintain adequate*  
5 *capital that exceeds current rating agency requirements. While we*  
6 *retain our investment grade ratings, all three rating agencies have*  
7 *placed our ratings on some form of negative outlook.*

8 In the event our credit ratings were to drop below “investment grade,”  
9 our access to the public corporate debt markets could be severely  
10 limited. The cutoff for investment grade is generally considered a  
11 long-term rating of “BBB-” (or Baa3 Moody’s Investors Service),  
12 which is equal to our lowest current rating. Furthermore, we expect  
13 that renegotiation or replacement of our existing financing  
14 arrangements beyond their current maturity dates will involve more  
15 restrictive terms and higher relative rates than those presently in place.  
16 Our ability to place custodial deposit accounts on deposit with our  
17 bank subsidiary could be affected if our credit ratings were reduced  
18 below investment grade. As of September 30, 2007, up to \$5.5 billion  
19 of our custodial deposits may be subject to placement with another  
20 bank if our credit ratings were reduced below investment grade. We  
21 also expect that a reduction in our ratings below investment grade  
22 would have a negative effect on our ability to retain our commercial  
23 deposits. In addition, our broker-dealer may experience difficulty in  
24 conducting its trading operations if its parent is unable to maintain its  
25 investment grade credit ratings. We have responded to these risks by  
26 procuring additional sources of liquidity as shown in the summary of  
27 highly reliable liquidity sources on the following page, including  
28

1           \$9.2 billion of cash and cash equivalents in the Bank as of  
2           September 30, 2007.

3 *Id.* at 107-109 (emphasis added).

4           159. On November 20, 2007 Countrywide released a statement denying reports  
5 that it was on the verge of bankruptcy. Countrywide Financial Corp. Press Release,  
6 Countrywide Comments on Financial Condition, Nov. 20, 2007, *available at*  
7 *http://about.countrywide.com/*  
8 *PressRelease/PressRelease.aspx?rid=1080254&ir=yes.*

9           160. On November 21, 2007, Countrywide stock closed below \$10 per share -- at  
10 \$9.42 per share -- for the first time since July 2002, a decline of almost 73 percent from  
11 the start of the Class Period.

12           161. On November 28, 2007, Countrywide's situation's worsened still: it was  
13 reported that the United States Trustee ("U.S. Trustee"), the federal agency monitoring  
14 the bankruptcy court, had subpoenaed Countrywide in late October to determine whether  
15 the Company had filed false and inaccurate foreclosure actions -- conduct constituting  
16 abuse of the bankruptcy system. Gretchen Morgenson, *Foreclosures By Lender*  
17 *Investigated*, N.Y. Times, Nov. 28, 2007.

18           162. The subpoenas were issued in connection with two foreclosures in Southern  
19 Florida in which borrowers filed for protection under Chapter 13 of the bankruptcy code  
20 and objected to the claim amounts Countrywide subsequently filed. The U.S. Trustee  
21 began investigating when Countrywide failed to appear at both hearings on borrowers'  
22 objections and sought to examine the procedures by which Countrywide determined that  
23 it had a valid claim to properties the subject of foreclosure and that it had correctly  
24 calculated the amount borrowers owed. *Id.*

25           163. On December 3, 2007, Defendant Mozilo again denied that the Company  
26 was considering bankruptcy. Reuters, Dec. 3, 2007, *available at* [http://www.reuters.com/](http://www.reuters.com/article/idUKWEN278720071203)  
27 [article/idUKWEN278720071203](http://www.reuters.com/article/idUKWEN278720071203). Notwithstanding these assurances, as of December 3,  
28 2007, Company stock closed at \$10.68, almost 50 percent off the September 30, 2007

1 close price.

2 164. Another shoe dropped on December 13, 2007, when the Illinois Attorney  
3 General announced an investigation of Countrywide's predatory and potentially  
4 fraudulent loan origination practices in conjunction with One Source Mortgage, a  
5 mortgage broker sued by the Illinois Attorney General for engaging in predatory lending  
6 practices. Gretchen Morgenson, *Countrywide Subpoenaed by Illinois*, N.Y. Times, Dec.  
7 13, 2007. Of the 69 cases examined in the suit, 26 of the first mortgages and 4 of the  
8 second mortgages were made by Countrywide. *Id.* At issue is Countrywide's potentially  
9 unlawful conduct involving oversight of independent brokers and its own mortgage  
10 brokers, including how Countrywide reviewed loan applications, made approvals and  
11 eventually packaged and sold the mortgages as securities to investors. *Id.*

12 165. On December 14, 2007, the California Attorney General announced that  
13 Countrywide was under investigation with regard to its mortgage lending practices and  
14 had been served with a subpoena for documents. E. Scott Reckard & Marc Lifsher, *Two*  
15 *States Probe Countrywide's Home Loans*, Los Angeles Times, Dec. 14, 2007.

16 **C. Defendants Knew or Should Have Known That Countrywide Stock Was an**  
17 **Imprudent Investment.**

18 166. During the Class Period, as described herein, Defendants knew or, had they  
19 properly discharged their fiduciary obligations, would have known that Countrywide stock  
20 was imprudent investment alternatives for the Plan due to Countrywide's serious  
21 mismanagement, improper business practices and potentially unlawful conduct,  
22 including, among other practices: (a) marketing and extending subprime mortgage loans,  
23 made on a "low documentation" basis, without adequate consideration of the borrower's  
24 ability to repay and with unreasonably high risk of borrower default; (b) intentionally  
25 marketing subprime loans with high risk of default to borrowers who qualified for prime-  
26 rate loans in order to increase Company profits; (c) encouraging brokers to market  
27 excessively high-cost loans with greater risk of default to borrowers by offering incentive  
28 commissions; (d) representing that Countrywide had strict and selective underwriting and

1 loan origination practices; (e) representing that Countrywide had sufficient reserves set  
2 aside to cover the high-risk loans it was selling; (f) operating with inadequate liquidity in  
3 relation to the volatility of Countrywide's business lines and assets; and (g) operating  
4 without the requisite internal controls to determine appropriate loan loss provisions.

5 167. As a result, Countrywide's stock price and the price of the Fund were  
6 artificially inflated making them an imprudent investment for the Plan.

7 168. As a result of Defendants' knowledge of the public misconceptions concerning  
8 the true financial health of the Company, any generalized warnings of market and  
9 diversification risks that Defendants made to the Plan's participants regarding the Plan's  
10 investment in Countrywide stock did not effectively inform the Plan's participants of the past,  
11 immediate, and future dangers of investing in Company stock.

12 169. Defendants also failed to take into account the changing risk profile of the  
13 Countrywide stock investment as a result of the above circumstances and the Company's  
14 deteriorating financial circumstances as demonstrated by objective indicators for  
15 evaluating a company's ongoing viability.

16 170. The Defendants failed to conduct an appropriate investigation into whether  
17 Countrywide stock was a prudent investment for the Plan and, in connection therewith, failed  
18 to provide the Plan's participants with information regarding Countrywide's tremendous  
19 problems so that participants could make informed decisions regarding their investments in  
20 Countrywide stock in the Plan.

21 171. An adequate or even cursory investigation by Defendants would have revealed  
22 to a reasonable fiduciary that, under these circumstances, investment by the Plan in  
23 Countrywide stock was excessively and unduly risky, and, thus, imprudent. A prudent  
24 fiduciary acting under similar circumstances would have acted to protect participants against  
25 unnecessary losses and would have made different investment decisions.

26 172. Because Defendants knew or should have known that Countrywide was not a  
27 prudent investment option for the Plan, they had a fiduciary duty to protect the Plan and its  
28 participants from unreasonable and entirely predictable losses incurred as a result of the Plan's

1 investment in Countrywide stock.

2 173. Defendants had available to them several different options for satisfying this  
3 duty, including: making appropriate public disclosures, as necessary; divesting the Plan of  
4 Countrywide stock; discontinuing further contributions to and/or investment in Countrywide  
5 stock under the Plan; consulting independent fiduciaries regarding appropriate measures to  
6 take in order to prudently and loyally serve the participants of the Plan; and/or resigning as  
7 fiduciaries of the Plan to the extent that as a result of their employment by Countrywide they  
8 could not loyally serve the Plan and its participants in connection with the Plan's acquisition  
9 and holding of Countrywide stock.

10 174. Despite the availability of these and other options, Defendants failed to take any  
11 action to protect participants from losses resulting from the Plan's investment in Countrywide  
12 stock. In fact, Defendants continued to invest and to allow investment of the Plan's assets in  
13 Company stock even as Countrywide's problems came to light.

14 175. In addition, the Defendants failed to adequately review the performance of the  
15 other fiduciaries of the Plan to ensure that they were fulfilling their fiduciary duties under the  
16 Plan and ERISA.

17 176. When it came to their own personal holdings of Countrywide stock, however,  
18 the Insider Selling Defendants sold millions of dollars of the stock, effectively cashing in  
19 while hanging Plan participants out to dry. Such conduct violated the duties of prudence and  
20 loyalty under ERISA, and demonstrated a clear conflict of interest by the Plan fiduciaries who  
21 engaged in such conduct.

22 **D. Defendants Failed to Provide Plan Participants with Complete and Accurate**  
23 **Information about the True Risks of Investment in Countrywide Stock in the**  
24 **Plan.**

25 177. ERISA mandates that plan fiduciaries have a duty of loyalty to the plan and  
26 its participants which includes the duty to speak truthfully to the plan and its participants  
27 when communicating with them. A fiduciary's duty of loyalty to plan participants under  
28 ERISA includes an obligation not to materially mislead, or knowingly allow others to  
materially mislead, plan participants and beneficiaries.

1 178. During the Class Period, upon information and belief, Defendants made  
2 direct and indirect communications with participants in the Plan which included  
3 statements regarding investments in Company stock. These communications included,  
4 but were not limited to, SEC filings, annual reports, press releases, and Plan documents,  
5 in which Defendants failed to disclose that Company stock was not a prudent retirement  
6 investment, and which were incorporated by reference in Plan documents. The Company  
7 regularly communicated with employees, including participants in the Plan, about the  
8 performance, future financial and business prospects of the Company's common stock,  
9 which was, far and away, the single largest asset of the Plan. 2006 Form 11-K at 10.

10 179. Defendants, as the Plan's fiduciaries, knew or should have known certain  
11 basic facts about the characteristics and behavior of the Plan's participants, well-  
12 recognized in the 401(k) literature and the trade press, concerning investment in company  
13 stock, including that:

- 14 (a). Employees tend to interpret a match in company stock as an  
15 endorsement of the company and its stock;
- 16 (b). Out of loyalty, employees tend to invest in company stock;
- 17 (c). Employees tend to over-extrapolate from recent returns, expecting  
18 high returns to continue or increase going forward;
- 19 (d). Employees tend not to change their investment option allocations in  
20 the plan once made;
- 21 (e). No qualified retirement professional would advise rank and file  
22 employees to invest more than a modest amount of retirement savings in  
23 company stock, and many retirement professionals would advise employees  
24 to avoid investment in company stock entirely;
- 25 (f). Lower income employees tend to invest more heavily in company  
26 stock than more affluent workers, though they are at greater risk; and
- 27 (g). Even for risk-tolerant investors, the risks inherent to company stock  
28 are not commensurate with its rewards.

1 180. Even though Defendants knew or should have known these facts, and even  
2 though Defendants knew of the high concentration of the Plan's funds in Company stock  
3 during the Class Period, Defendants failed to take any meaningful ameliorative action to  
4 protect the Plan and its participants from their heavy investment in an imprudent  
5 retirement vehicle, Countrywide stock.

6 181. In addition, Defendants failed to provide participants, and the market as a  
7 whole, with complete and accurate information regarding the true financial condition of  
8 the Company. As such, participants in the Plan could not appreciate the true risks  
9 presented by investments in Company stock and therefore could not make informed  
10 decisions regarding their investments in Company stock in the Plan.

11 182. Specifically, Defendants failed to provide the Plan's participants with  
12 complete and accurate information regarding Countrywide's serious mismanagement,  
13 improper business practices and potentially unlawful conduct, including, among other  
14 practices: (a) marketing and extending subprime mortgage loans, made on a "low  
15 documentation" basis, without adequate consideration of the borrower's ability to repay  
16 and with unreasonably high risk of borrower default; (b) intentionally marketing  
17 subprime loans with high risk of default to borrowers who qualified for prime-rate loans  
18 in order to increase Company profits; (c) encouraging brokers to market excessively  
19 high-cost loans with greater risk of default to borrowers by offering incentive  
20 commissions; (d) representing that Countrywide had strict and selective underwriting and  
21 loan origination practices; (e) representing that Countrywide had sufficient reserves set  
22 aside to cover the high-risk loans it was selling; (f) operating with inadequate liquidity in  
23 relation to the volatility of Countrywide's business lines and assets; and (g) operating  
24 without the requisite internal controls to determine appropriate loan loss provisions; (i)  
25 insider self-dealing through improper insider sales of Countrywide stock.

26 183. As such, the participants were not informed of the true risks of investing  
27 their retirement assets in the Plan in Countrywide stock.  
28

1 **E. Defendants Suffered From Conflicts of Interest.**

2 184. As ERISA fiduciaries, Defendants are required to manage the Plan's  
3 investments, including the investment in Countrywide stock, solely in the interest of the  
4 participants and beneficiaries, and for the exclusive purpose of providing benefits to  
5 participants and their beneficiaries. This duty of loyalty requires fiduciaries to avoid  
6 conflicts of interest and to resolve them promptly when they occur.

7 185. Conflicts of interest abound when a company that invests plan assets in  
8 company stock founders. This is because as the situation deteriorates, plan fiduciaries are  
9 torn between their duties as officers and directors for the company on the one hand, and  
10 to the plan and plan participants on the other. As courts have made clear "[w]hen a  
11 fiduciary has dual loyalties, the prudent person standard requires that he make a careful  
12 and impartial investigation of all investment decisions." *Martin v. Feilen*, 965 F.2d 660,  
13 670 (8th Cir.1992) (citation omitted). Here, Defendants breached this fundamental  
14 fiduciary duty.

15 186. First, Defendants failed to investigate whether to take appropriate and  
16 necessary action to protect the Plan, and instead, chose the interests of the Company over  
17 the Plan by continuing to offer Countrywide stock as a Plan investment option, and  
18 maintain investment in Countrywide stock in the Plan.

19 187. Second, certain of the Defendants who knew or should have known of  
20 Countrywide's inflated stock price during much of the Class Period, benefited directly  
21 from this knowledge or neglect by selling their personal holdings of Countrywide stock  
22 for significant gain. During the Class Period, the Insider Selling Defendants sold  
23 approximately 8,624,614 shares of Countrywide stock for proceeds of over \$313 million.  
24 The following is a summary of the insider sales by these Plan fiduciaries since January  
25 2006:

Name	Sales	Shares Sold	Proceeds of Sales
Mozilo	121	7,151,051	\$256,273,933
Cisneros	3	79,407	\$3,052,506

Cunningham	12	75,000	\$3,004,450
Donato	2	54,142	\$2,142,052
Dougherty	12	227,905	\$9,182,698
Gates	4	75,000	\$2,978,475
Heller	3	106,540	\$4,014,688
Kripalani	4	68,020	\$2,709,000
Kurland	34	413,049	\$15,211,426
Robertson	3	152,000	\$5,966,400
Snyder	6	170,000	\$6,462,738
Speakes	1	52,500	\$2,342,000
<b>TOTALS:</b>	<b>205</b>	<b>8,624,614</b>	<b>\$313,340,366</b>

188. In particular, Defendant Mozilo engaged in significant selling during the Class Period. Upon review of the Form 4s filed in the last year alone, Defendant Mozilo made a profit of \$135 million from the sale of Company stock, approximately one-third of the amount he has reaped over the past 23 years. Defendant Mozilo continues to hold approximately 500,000 shares in Countrywide stock. Form 4 (Oct. 12, 2007).

189. On October 11, 2007, North Carolina State Treasurer, Richard Moore requested that the SEC investigate the timing of stock sales made by Defendant Mozilo. David Scheer, *Countrywide's Mozilo is Under SEC Investigation, Person Says*, Bloomberg.com, Oct. 17, 2007.

190. On October 17, 2007, the SEC announced that it had opened an informal inquiry into Defendant Mozilo's sale of Company stock. *Id.*

191. Upon information and belief, Defendant Mozilo's Rule 10b5-1 trading plans, the prearranged selling programs filed with the SEC since 2005, are the subject of the SEC's inquiry. *See* Gretchen Morgenson, *Countrywide Chief Is Said to Face SEC Inquiry*, N.Y. Times, Oct. 18, 2007.

192. Upon information and belief, throughout the Class Period, Defendant Mozilo sold shares of Company stock according to his Rule 10b5-1 plans; however, as of October 2006, the pace of Defendant Mozilo's sales increased significantly. *Id.* Defendant Mozilo filed a 10b5-1 in October 2006 which provided for the sale of 350,000

1 shares of Company stock each month. *Id.* In December 2006, Defendant Mozilo  
2 implemented an additional plan, which provided that an additional 115,000 shares of be  
3 sold, resulting in a total of 465,000 shares sold on a monthly basis. *Id.* In February 2007,  
4 when shares hit a high of \$45.03, Defendant Mozilo increased the number of shares sold  
5 under the December 2006 10b5-1 plan to 345,000 or 580,000 total shares sold per month.  
6 *Id.*

7 193. The Insider Selling Defendants breached their fiduciary duties to the Plan  
8 and its participants, as, rather than ensure that the Plan discontinued investment in  
9 Company stock or informing Plan participants regarding the material negative  
10 information concerning the Company's above-outlined problems, they chose to remain  
11 quiet and reap the benefit of their insider knowledge by selling their personal holdings of  
12 Countrywide for enormous gains.

13 194. While the above Defendants protected and enriched themselves, they stood  
14 idly by as the Plan lost well over one hundred million dollars because of its investment in  
15 Countrywide stock. This is precisely the type of conflicted and disloyal action that  
16 ERISA was intended to prevent.

#### 17 **VIII. THE RELEVANT LAW**

18 195. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), provides, in pertinent part, that  
19 a civil action may be brought by a participant for relief under ERISA § 409, 29 U.S.C. §  
20 1109.

21 196. ERISA § 409(a), 29 U.S.C. § 1109(a), "Liability for Breach of Fiduciary  
22 Duty," provides, in pertinent part, that:

23 any person who is a fiduciary with respect to a plan who breaches any  
24 of the responsibilities, obligations, or duties imposed upon fiduciaries  
25 by this subchapter shall be personally liable to make good to such plan  
26 any losses to the plan resulting from each such breach, and to restore  
27 to such plan any profits of such fiduciary which have been made  
28 through use of assets of the plan by the fiduciary, and shall be subject

1 to such other equitable or remedial relief as the court may deem  
2 appropriate, including removal of such fiduciary.

3 197. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes individual  
4 participants to seek equitable relief from defendants, including, without limitation,  
5 injunctive relief and, as available under applicable law, constructive trust, restitution, and  
6 other monetary relief.

7 198. ERISA §§ 404(a)(1)(A) and (B), 29 U.S.C. §§ 1104(a)(1)(A) and (B),  
8 provides, in pertinent part, that a fiduciary shall discharge his duties with respect to a plan  
9 solely in the interest of the participants and beneficiaries, for the exclusive purpose of  
10 providing benefits to participants and their beneficiaries, and with the care, skill,  
11 prudence, and diligence under the circumstances then prevailing that a prudent man  
12 acting in a like capacity and familiar with such matters would use in the conduct of an  
13 enterprise of a like character and with like aims.

14 199. These fiduciary duties under ERISA §§ 404(a)(1)(A) and (B) are referred to  
15 as the duties of loyalty, exclusive purpose and prudence and are the “highest known to  
16 the law.” *Howard v. Shay*, 100 F.3d 1484, 1489 (9th Cir. 1996). They entail, among  
17 other things:

18 (a) The duty to conduct an independent and thorough investigation into, and  
19 to continually monitor, the merits of all the investment alternatives of a plan,  
20 including in this instance Countrywide stock, to ensure that each investment  
21 is a suitable option for the plan;

22  
23 (b). The duty to avoid conflicts of interest and to resolve them promptly  
24 when they occur. A fiduciary must always administer a plan with an “eye  
25 single” to the interests of the participants and beneficiaries, regardless of the  
26 interests of the fiduciaries themselves or the plan sponsor;

27 (c). The duty to follow the terms of the plan document only “insofar as  
28 such documents and instruments are consistent with the provisions of [title I]

1 and title IV” of ERISA. 29 U.S.C. § 1104(a)(1)(D). Therefore, if a plan’s  
2 terms are inconsistent with ERISA, a prudent fiduciary acting in the best  
3 interests of the plan’s participants must effectively override the plan’s terms.  
4 The Department of Labor’s regulations interpreting ERISA also demonstrate  
5 that the fiduciary’s duty of prudence trumps even his obligations to comply  
6 with plan terms, including statements of investment policy or plan design;  
7 and

8  
9 (d). The duty to disclose and inform, which encompasses: (1) a negative  
10 duty not to misinform; (2) an affirmative duty to inform when the fiduciary  
11 knows or should know that silence might be harmful; and (3) a duty to  
12 convey complete and accurate information material to the circumstances of  
13 participants and beneficiaries.

14 200. ERISA § 405(a), 29 U.S.C. § 1105(a), “Liability for Breach by Co-  
15 Fiduciary,” provides, in pertinent part, that:

16 In addition to any liability which he may have under any other  
17 provision of this part, a fiduciary with respect to a plan shall be liable  
18 for a breach of fiduciary responsibility of another fiduciary with  
19 respect to the same plan in the following circumstances:

20 (1) if he participates knowingly in, or knowingly undertakes to  
21 conceal, an act or omission of such other fiduciary, knowing such act  
22 or omission is a breach;

23 (2) if, by his failure to comply with section 404(a)(1), 29 U.S.C.  
24 § 1104(a)(1), in the administration of his specific responsibilities  
25 which give rise to his status as a fiduciary, he has enabled such other  
26 fiduciary to commit a breach; or  
27  
28

1 (3) if he has knowledge of a breach by such other fiduciary, unless he  
2 makes reasonable efforts under the circumstances to remedy the  
3 breach.

4 201. Co-fiduciary liability is an important part of ERISA's regulation of fiduciary  
5 responsibility. Because ERISA permits the fractionalization of the fiduciary duty, there  
6 may be, as in this case, several ERISA fiduciaries involved in a given issue, such as the  
7 role of company stock in a plan. In the absence of co-fiduciary liability, fiduciaries  
8 would be incentivized to limit their responsibilities as much as possible and to ignore the  
9 conduct of other fiduciaries. The result would be a setting in which a major fiduciary  
10 breach could occur, but the responsible party could not easily be identified. Co-fiduciary  
11 liability obviates this. Even if a fiduciary merely knows of a breach, a breach he had no  
12 connection with, he must take steps to remedy it:

13 [I]f a fiduciary knows that another fiduciary of the plan has committed  
14 a breach, and the first fiduciary knows that this is a breach, the first  
15 fiduciary must take reasonable steps under the circumstances to  
16 remedy the breach. . . . [T]he most appropriate steps in the  
17 circumstances may be to notify the plan sponsor of the breach, or to  
18 proceed to an appropriate Federal court for instructions, or bring the  
19 matter to the attention of the Secretary of Labor. The proper remedy  
20 is to be determined by the facts and circumstances of the particular  
21 case, and it may be affected by the relationship of the fiduciary to the  
22 plan and to the co- fiduciary, the duties and responsibilities of the  
23 fiduciary in question, and the nature of the breach.

24 1974 U.S.C.C.A.N. 5038, 1974 WL 11542, at 5080.

25 202. Plaintiff therefore brings this action under the authority of ERISA  
26 § 502(a)(2) for relief under ERISA § 409(a) to recover losses sustained by the Plan  
27 arising out of the breaches of fiduciary duties by the Defendants for violations under  
28 ERISA § 404(a)(1) and ERISA § 405(a).

## IX. ERISA § 404(c) DEFENSE INAPPLICABLE

203. ERISA § 404(c) is an affirmative defense that provides a limited exception to fiduciary liability for losses that result from participants' exercise of control over investment decisions. In order for § 404(c) to apply, participants must in fact exercise "independent control" over investment decisions, and the fiduciaries must otherwise satisfy the numerous procedural and substantive requirements of ERISA § 404(c), 29 U.S.C. § 1104(c), and the regulations promulgated under it.

204. ERISA § 404(c) does not apply here for, among others, the following three reasons.

205. First, ERISA § 404(c) does not and cannot provide any defense to the fiduciaries' imprudent decision to select and continue offering Countrywide stock as an investment option in the Plan, or to continue matching in Countrywide stock, as these are not decisions that were made or controlled by the participants. *See* Final Reg. Regarding Participant Directed Individual Account Plans (ERISA Section 404(c) Plans) ("Final 404(c) Reg."), 57 Fed. Reg. 46906-01, 1992 WL 277875, at \*46924 n.27 (Oct. 13, 1992) (codified at 29 C.F.R. § 2550) (noting that "the act of limiting or designating investment options which are intended to constitute all or part of the investment universe of an ERISA § 404(c) plan is a fiduciary function which, whether achieved through fiduciary designation or express plan language, is not a direct or necessary result of any participant direction of such plan").

206. Second, as to participant directed investment in Countrywide stock, ERISA § 404(c) does not apply because Defendants failed to ensure effective participant control by providing complete and accurate material information to participants regarding Countrywide stock. *See* 29 C.F.R. § 2550.404c-1(b)(2)(i)(B) (the participant must be provided with "sufficient information to make informed decisions"). As a consequence, participants in the Plan did not have informed control over the portion of the Plan's assets that were invested in Countrywide stock as a result of their investment directions, and the Defendants remain entirely responsible for losses that result from such investment.

1           207. Third, upon information and belief, the Plan participants were not informed  
2 that the Plan intended to comply as a § 404(c) plan in the manner required by ERISA and  
3 applicable regulations. Therefore, §404(c) of ERISA does not apply to participants'  
4 "investment decisions" regarding Countrywide stock, and Defendants remain liable for  
5 losses suffered by participants during the Class Period as a result of such decisions.

6           208. Because ERISA § 404(c) does not apply here, the Defendants' liability to the  
7 Plan, the Plaintiff and the Class (as defined below) for losses caused by the Plan's  
8 investment in Countrywide stock is established upon proof that such investments were or  
9 became imprudent and resulted in losses in the value of the assets in the Plan during the  
10 Class Period.

11           **X. DEFENDANTS' INVESTMENT IN COUNTRYWIDE STOCK IS NOT**  
12           **ENTITLED TO A PRESUMPTION OF PRUDENCE**

13           209. The presumption of prudence that some courts have held applies to the  
14 decision to make and maintain investment in company stock in an ESOP does not apply  
15 here because the Plan was not, in fact, designed to require the offering of Company stock  
16 as a Plan investment option. Rather, Company stock is a discretionary feature of the  
17 Plan. Accordingly, the Plan lacks the principle feature on which the presumption of  
18 prudence is based – namely a need to balance two competing objectives of typical ESOPs  
19 – retirement savings on the one hand, and the goal of long term employee ownership on  
20 the other. Here, the Plan's only long-term purpose is retirement savings.

21           210. To the extent that a presumption of reasonableness applies to the decision to  
22 maintain investments in company stock in the purported ESOP portion of the Plan, such  
23 presumption is overcome by the facts alleged here, including, among other averments:

- 24           • The Company's potentially unlawful business practices during the Class Period  
25           and resulting multiple government investigations of same which threaten the  
26           viability of the Company;

- 1 • Serious and gross mismanagement evidenced by, among other things:
  - 2 ○ marketing and extending subprime mortgage loans, made on a “low
  - 3 documentation” basis, without adequate consideration of the borrower’s
  - 4 ability to repay and with unreasonably high risk of borrower default;
  - 5 ○ intentionally marketing subprime loans with high risk of default to
  - 6 borrowers who qualified for prime-rate loans in order to increase
  - 7 Company profits;
  - 8 ○ encouraging brokers to market excessively high-cost loans with greater
  - 9 risk of default to borrowers by offering incentive commissions;
  - 10 ○ representing that Countrywide had strict and selective underwriting and
  - 11 loan origination practices;
  - 12 ○ representing that Countrywide had sufficient reserves set aside to cover
  - 13 the high-risk loans it was selling;
  - 14 ○ operating with inadequate liquidity in relation to the volatility of
  - 15 Countrywide’s business lines and assets; and
  - 16 ○ operating without the requisite internal controls to determine appropriate
  - 17 loan loss provisions
  - 18 ○ the artificial inflation of Countrywide stock as a result of the above
  - 19 improper business practices.
- 20 • Countrywide’s deteriorating financial condition and potentially unlawful
- 21 business practices -- calling into question the Company’s ongoing viability as a
- 22 result of the Company’s inadequate reserves and risky and inappropriate
- 23 lending practices, and dire circumstances caused thereby;
- 24 • Insider self-dealing by Defendants identified above; and
- 25 • A precipitous stock price decline from over \$32.13 to \$9.01 during the Class
- 26 Period.

27 211. The imprudence of continued investment by Defendants in Countrywide  
28 stock during the Class Period runs afoul of Department of Labor regulations:

1 [B]ecause every investment necessarily causes a plan to forgo other  
2 investment opportunities, an investment will not be prudent if it would  
3 be expected to provide a plan with a lower rate of return than  
4 available alternative investments with commensurate degrees of risk  
5 or is riskier than alternative available investments with commensurate  
6 rates of return.

7 29 C.F.R. § 2509.94-1. Defendants had available to them investment alternatives to  
8 Countrywide stock that had either a higher rate of return with risk commensurate to  
9 Countrywide stock or an expected rate of return commensurate to Countrywide stock but  
10 with less risk.

11 212. Based on these circumstances, and the others alleged herein, it was  
12 imprudent and an abuse of discretion for Defendants to continue to make and maintain  
13 investment in Countrywide stock, and, effectively, to do nothing at all to protect the Plan  
14 from large losses as a result of such investment during the Class Period.

## 15 XI. CAUSES OF ACTION

### 16 A. Count I: Failure to Prudently and Loyalily Manage the Plan and Assets of the 17 Plan.

18 213. Plaintiff incorporates by this reference the paragraphs above.

19 214. This Count alleges fiduciary breach against: the Company, the Director  
20 Defendants and the Administrative Committee Defendants during such time as each  
21 served as the Plan Administrator, respectively, and the Investment Committee  
22 Defendants.

23 215. The Defendants named in this Count were named fiduciaries pursuant to  
24 ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of  
25 § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of  
26 loyalty, exclusive purpose, and prudence.

27 216. As alleged above, the scope of the fiduciary duties and responsibilities of the  
28 Defendants included managing the assets of the Plan for the sole and exclusive benefit of

1 the Plan's participants and beneficiaries, and with the care, skill, diligence, and prudence  
2 required by ERISA. The Defendants were directly responsible for, among other things,  
3 selecting prudent investment options, eliminating imprudent options, determining how to  
4 invest employer contributions to the Plan and directing the Trustee regarding the same,  
5 evaluating the merits of the Plan's investments on an ongoing basis, and taking all  
6 necessary steps to ensure that the Plan's assets were invested prudently.

7       217. Yet, contrary to their duties and obligations under the Plan documents and  
8 ERISA, the Defendants failed to loyally and prudently manage the assets of the Plan.  
9 Specifically, during the Class Period, these Defendants knew or should have known that  
10 Countrywide stock no longer was a suitable and appropriate investment for the Plan, but  
11 was, instead, a highly speculative and excessively risky investment in light of the  
12 Company's potentially unlawful conduct, fundamental weaknesses, deteriorating  
13 financial circumstances, and challenges to its ongoing viability. Nonetheless, during the  
14 Class Period, these Defendants continued to offer Countrywide stock as an investment  
15 option for participant contributions in the Plan, as well as the sole investment receptacle  
16 for Employer Matching Contributions in the Plan during the Class Period, even though  
17 the Defendants named in this Count had: (1) the discretion to suspend offering Company  
18 stock as a Plan investment option; (2) the discretion to suspend making matching  
19 contributions and discretionary contributions in Company stock, and instead, invest such  
20 amount in cash, and (3) the discretion to adopt rules permitting participants to elect to  
21 invest all or a portion of the Company Stock held in their accounts in another Fund. *See*  
22 Section V. , *supra*.

23       218. Defendants could have and should have taken action to protect Plan  
24 participants from unnecessary losses by utilizing their discretion under the Plan  
25 Document and ERISA to suspend offering Company stock as a Plan investment option  
26 during the Class Period and matching in the stock. Instead, the Defendants continued to  
27 offer Countrywide stock in the Plan despite the fact that they clearly knew or should have  
28 known that such investment was unduly risky and imprudent due to the Company's

1 serious mismanagement, improper business practices and potentially unlawful conduct,  
2 described herein.

3 219. The Defendants were obliged to prudently and loyally manage all of the  
4 Plan's assets. However, their duties of prudence and loyalty were especially significant  
5 with respect to Company stock because: (a) company stock is a particularly risky and  
6 volatile investment, even in the absence of company misconduct; and (b) participants  
7 tend to underestimate the likely risk and overestimate the likely return of investment in  
8 company stock. In view of this, the Defendants were obliged to have in place a regular,  
9 systematic procedure for evaluating the prudence of investment in Company stock.

10 220. The Defendants had no such procedure. Moreover, they failed to conduct an  
11 appropriate investigation of the merits of continued investment in Countrywide stock  
12 even in light of the losses, the Company's highly risky, potentially unlawful and  
13 inappropriate practices, and the particular dangers that these practices posed to the Plan.  
14 Such an investigation would have revealed to a reasonably prudent fiduciary the  
15 imprudence of continuing to make and maintain investment in Countrywide stock under  
16 these circumstances.

17 221. The Defendants' decisions respecting the Plan's investment in Countrywide  
18 stock described above, under the circumstances alleged herein, abused their discretion as  
19 ERISA fiduciaries in that a prudent fiduciary acting under similar circumstances would  
20 have made different investment decisions. Specifically, based on the above, a prudent  
21 fiduciary could not have reasonably believed that further and continued investment of the  
22 Plan's contributions and assets in Countrywide stock was in keeping with the Plan's  
23 settlor's expectations of how a prudent fiduciary would operate.

24 222. The Defendants were obligated to discharge their duties with respect to the  
25 Plan with the care, skill, prudence, and diligence under the circumstances then prevailing  
26 that a prudent man acting in a like capacity and familiar with such matters would use in  
27 the conduct of an enterprise of a like character and with like aims. ERISA  
28 § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

1           223. According to DOL regulations and case law interpreting this statutory  
2 provision, a fiduciary's investment or investment course of action is prudent if: (a) he  
3 has given appropriate consideration to those facts and circumstances that, given the scope  
4 of such fiduciary's investment duties, the fiduciary knows or should know are relevant to  
5 the particular investment or investment course of action involved, including the role the  
6 investment or investment course of action plays in that portion of the plan's investment  
7 portfolio with respect to which the fiduciary has investment duties; and (b) he has acted  
8 accordingly.

9           224. Again, according to DOL regulations, "appropriate consideration" in this  
10 context includes, but is not necessarily limited to:

- 11           • A determination by the fiduciary that the particular investment or investment  
12 course of action is reasonably designed, as part of the portfolio (or, where  
13 applicable, that portion of the plan portfolio with respect to which the fiduciary  
14 has investment duties), to further the purposes of the plan, taking into  
15 consideration the risk of loss and the opportunity for gain (or other return)  
16 associated with the investment or investment course of action; and
- 17           • Consideration of the following factors as they relate to such portion of the  
18 portfolio:
  - 19           ○ The composition of the portfolio with regard to diversification;
  - 20           ○ The liquidity and current return of the portfolio relative to the anticipated  
21 cash flow requirements of the plan; and
  - 22           ○ The projected return of the portfolio relative to the funding objectives of  
23 the plan.

24           225. Given the conduct of the Company as described above, the Defendants could  
25 not possibly have acted prudently when they continued to invest the Plan's assets in  
26 Countrywide stock because, among other reasons:

- 1 • The Prudence Defendants knew of and/or failed to investigate the failures of  
2 the Company, including, but not limited to the following, which made the  
3 Company an extremely risky and imprudent investment for the Plan:
- 4 ○ engaging in potentially unlawful business practices including predatory  
5 lending;
  - 6 ○ marketing and extending subprime mortgage loans, made on a “low  
7 documentation” basis, without adequate consideration of the borrower’s  
8 ability to repay and with unreasonably high risk of borrower default;
  - 9 ○ intentionally marketing subprime loans with high risk of default to  
10 borrowers who qualified for prime-rate loans in order to increase  
11 Company profits;
  - 12 ○ encouraging brokers to market excessively high-cost loans with greater  
13 risk of default to borrowers by offering incentive commissions
  - 14 ○ representing that Countrywide had strict and selective underwriting and  
15 loan origination practices;
  - 16 ○ representing that Countrywide had sufficient reserves set aside to cover  
17 the high-risk loans it was selling;
  - 18 ○ operating with inadequate liquidity in relation to the volatility of  
19 Countrywide’s business lines and assets; and
  - 20 ○ operating without the requisite internal controls to determine appropriate  
21 loan loss provisions; and
  - 22 ○ the artificial inflation of Countrywide stock as a result of the above  
23 improper business practices.
- 24 • The risk associated with the investment in Countrywide stock during the Class  
25 Period was far above and beyond the normal, acceptable risk associated with  
26 investment in company stock;
- 27 • This abnormal investment risk could not have been known by the Plan’s  
28 participants, and the Prudence Defendants knew that it was unknown to them

1 (as it was to the market generally), because the fiduciaries never disclosed it;

- 2 • Knowing of this extraordinary risk, and knowing the Plan's participants did not
- 3 know it, the Prudence Defendants had a duty to avoid permitting the Plan or any
- 4 participant from investing the Plan's assets in Countrywide stock; and
- 5 • Further, knowing that the Plan was not a diversified portfolio, but was heavily
- 6 invested in Company stock, the Prudence Defendants had a heightened
- 7 responsibility to divest the Plan of Company stock if it became or remained
- 8 imprudent.

9 226. The fiduciary duty of loyalty entails, among other things, a duty to avoid  
10 conflicts of interest and to resolve them promptly when they occur. A fiduciary must  
11 always administer a plan with single-minded devotion to the interests of the participants  
12 and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan  
13 sponsor. On information and belief, the Insider Selling Defendants acted in their own  
14 self-interest in benefiting from selling huge amounts of Company stock at fraudulently  
15 inflated values. Fiduciaries laboring under such conflicts, must, in order to comply with  
16 the duty of loyalty, make special efforts to assure that their decision making process is  
17 untainted by the conflict and made in a disinterested fashion, typically by seeking  
18 independent financial and legal advice obtained only on behalf of the plan.

19 227. The Insider Selling Defendants breached their duty to avoid conflicts of  
20 interest and to promptly resolve them by, *inter alia*, failing to engage independent  
21 advisors who could make independent judgments concerning the Plan's investment in  
22 Countrywide; failing to notify appropriate federal agencies, including the DOL, of the  
23 facts and circumstances that made Countrywide stock an unsuitable investment for the  
24 Plan; failing to take such other steps as were necessary to ensure that participants'  
25 interests were loyally and prudently served; with respect to each of these above failures,  
26 doing so in order to avoid adversely impacting their own compensation or drawing  
27 attention to Countrywide's inappropriate practices; engaging in insider sales of  
28 Countrywide stock and yet, taking no action to disclose to the Plan's participants the

1 reason for their sales or to protect the Plan's holdings of Countrywide stock once proper  
2 disclosure was made; and by otherwise placing their own and Countrywide's improper  
3 interests above the interests of the participants with respect to the Plan's investment in  
4 Countrywide stock.

5 228. As a consequence of the Defendants' breaches of fiduciary duty alleged in  
6 this Count, the Plan suffered tremendous losses. If the Defendants had discharged their  
7 fiduciary duties to prudently invest the Plan's assets, the losses suffered by the Plan  
8 would have been minimized or avoided. Therefore, as a direct and proximate result of  
9 the breaches of fiduciary duty alleged herein, the Plan, and indirectly Plaintiff and the  
10 other Class members, lost well over one hundred million dollars of retirement savings.

11 229. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a),  
12 1132(a)(2) and (a)(3), the Defendants are liable to restore the losses to the Plan caused by  
13 their breaches of fiduciary duties alleged in this Count and to provide other equitable  
14 relief as appropriate.

15 **B. Count II: Failure to Monitor Fiduciaries.**

16 230. Plaintiff incorporates by this reference the allegations above.

17 231. This Count alleges fiduciary breaches against the following Defendants: the  
18 Company, Director Defendants and Compensation Committee Defendants, through  
19 which the Company and the Board of Directors acted in carrying out their appointment  
20 responsibilities (collectively, the "Monitoring Defendants").

21 232. As alleged above, during the Class Period the Monitoring Defendants were  
22 named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto*  
23 fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both.  
24 Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

25 233. As alleged above, the scope of the fiduciary responsibilities of the  
26 Monitoring Defendants included the responsibility to appoint, and remove, and thus,  
27 monitor the performance of other fiduciaries as follows:  
28

Monitoring Fiduciary	Monitored Fiduciary	Reference
Countrywide	Investment Committee Administrative Committee	¶ 62
Director Defendants	Compensation Committee Investment Committee Administrative Committee	¶¶ 66-68
Compensation Committee	Investment Committee Administrative Committee	¶¶ 73-78

234. Under ERISA, a monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment and holding of plan assets, and must take prompt and effective action to protect the plan and participants when they are not.

235. The monitoring duty further requires that appointing fiduciaries have procedures in place so that on an ongoing basis they may review and evaluate whether the “hands-on” fiduciaries are doing an adequate job (for example, by requiring periodic reports on their work and the plan’s performance, and by ensuring that they have a prudent process for obtaining the information and resources they need). In the absence of a sensible process for monitoring their appointees, the appointing fiduciaries would have no basis for prudently concluding that their appointees were faithfully and effectively performing their obligations to plan participants or for deciding whether to retain or remove them.

236. Furthermore, a monitoring fiduciary must provide the monitored fiduciaries with complete and accurate information in their possession that they know or reasonably should know that the monitored fiduciaries must have in order to prudently manage the plan and the plan assets, or that may have an extreme impact on the plan and the fiduciaries’ investment decisions regarding the plan.

237. The Monitoring Defendants breached their fiduciary monitoring duties by, among other things: (a) failing, at least with respect to the Plan’s investment in Company

1 stock, to monitor their appointees, to evaluate their performance, or to have any system in  
2 place for doing so, and standing idly by as the Plan suffered enormous losses as a result  
3 of their appointees' imprudent actions and inaction with respect to Company stock; (b)  
4 failing to ensure that the monitored fiduciaries appreciated the true extent of  
5 Countrywide's highly risky and inappropriate business and accounting practices and  
6 potentially unlawful conduct, and the likely impact of such practices on the value of the  
7 Plan's investment in Countrywide stock; (c) to the extent any appointee lacked such  
8 information, failing to provide complete and accurate information to all of their  
9 appointees such that they could make sufficiently informed fiduciary decisions with  
10 respect to the Plan's assets; and (d) failing to remove appointees whose performance was  
11 inadequate in that they continued to make and maintain investments in Countrywide  
12 stock despite their knowledge of practices that rendered Countrywide stock an imprudent  
13 investment during the Class Period for participants' retirement savings in the Plan, and  
14 who breached their fiduciary duties under ERISA.

15 238. As a consequence of the Monitoring Defendants' breaches of fiduciary duty,  
16 the Plan suffered tremendous losses. If the Monitoring Defendants had discharged their  
17 fiduciary monitoring duties as described above, the losses suffered by the Plan would  
18 have been minimized or avoided. Therefore, as a direct and proximate result of the  
19 breaches of fiduciary duty alleged herein, the Plan, and indirectly Plaintiff and the other  
20 Class members, lost well over one hundred million dollars of retirement savings.

21 239. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a),  
22 1132(a)(2) and (a)(3), the Monitoring Defendants are liable to restore the losses to the  
23 Plan caused by their breaches of fiduciary duties alleged in this Count and to provide  
24 other equitable relief as appropriate.

25  
26  
27  
28

1 **C. Count III: Breach of Fiduciary Duty – Failure to Provide Complete and**  
2 **Accurate Information to the Plan’s Participants and Beneficiaries.**

3 240. Plaintiff incorporates by this reference the allegations above.

4 241. This Count alleges fiduciary breach against: the Company, the Director  
5 Defendants and the Administrative Committee Defendants.

6 242. At all relevant times, as alleged above, Defendants listed in this Count were  
7 fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Thus,  
8 they were bound by the duties of loyalty, exclusive purpose, and prudence.

9 243. At all relevant times, the scope of the fiduciary responsibility of the  
10 Defendants included the communications and material disclosures to the Plan participants  
11 and beneficiaries.

12 244. The duty of loyalty under ERISA requires fiduciaries to speak truthfully to  
13 participants, not to mislead them regarding the plan or plan assets, and to disclose  
14 information that participants need in order to exercise their rights and interests under the  
15 plan. This duty to inform participants includes an obligation to provide participants and  
16 beneficiaries of the plan with complete and accurate information, and to refrain from  
17 providing false information or concealing material information, regarding plan  
18 investment options such that participants can make informed decisions with regard to the  
19 prudence of investing in such options made available under the plan. This duty applies to  
20 all of the Plan’s investment options, including investment in Countrywide stock.

21 245. Because investments in the Plan were not diversified (*i.e.* the Defendants  
22 chose to invest the Plan’s assets, and/or allow those assets to be invested so heavily in  
23 Countrywide stock), such investment carried with it an inherently high degree of risk.  
24 This inherent risk made the Defendants’ duty to provide complete and accurate  
25 information particularly important with respect to Countrywide stock.

26 246. The Defendants breached their duty to inform participants by failing to  
27 provide complete and accurate information regarding Countrywide’s serious  
28 mismanagement and improper business practices, public misrepresentations and material

1 accounting irregularities, and the consequential artificial inflation of the value of  
2 Countrywide stock, and, generally, by conveying incomplete information regarding the  
3 soundness of Countrywide stock and the prudence of investing and holding retirement  
4 contributions in Countrywide equity. These failures were particularly devastating to the  
5 Plan and its participants; a heavy percentage of the Plan's assets were invested in  
6 Countrywide stock during the Class Period and, thus, losses in this investment had a  
7 significant impact on the value of participants' retirement assets.

8         247. Periodically during the Class Period, Countrywide or its delegate, as the Plan  
9 Administrator, disseminated information to the participants of the Plan including  
10 Summary Plan Descriptions ("SPD") for the Plan. The SPDs and, on information and  
11 belief, other information disseminated by Countrywide to the participants of the Plan,  
12 incorporated by reference the SEC filings, which contained omissions and misstatements  
13 regarding the financial condition of the Countrywide and its results of operations. *See*  
14 Countrywide Financial Corporation 401(k) Savings and Investment Plan Prospectus and  
15 Summary Plan Description at 20 (Jan. 1, 2006) (Incorporating by reference the following  
16 documents filed with the SEC by the Company: the Company's Annual Report on Form  
17 10-K for the fiscal year ended December 31, 2003, filed with the SEC on March 12,  
18 2004; the Company's Quarterly Report on Form 10-Q for the quarters ended March 31,  
19 2004, filed with the SEC on May 7, 2004; the description of the Company's Common  
20 Stock contained in the Registration Statements on Form S-8 filed with the SEC on March  
21 1, 1999; and any future filings made by the Company pursuant to Sections 13, 14 and  
22 15(d) of the Exchange Act).

23         248. Defendants' omissions clearly were material to participants' ability to  
24 exercise informed control over their Plan accounts, as in the absence of the information,  
25 participants did not know the true risks presented by the Plan's investment in  
26 Countrywide stock.

27

28

1 249. Defendants' omissions and incomplete statements alleged herein were Plan-  
2 wide and uniform in that the Defendants failed to provide complete and accurate  
3 information to any of the Plan's participants.

4 250. Defendants in this Count were unjustly enriched by the fiduciary breaches  
5 described in this Count.

6 251. As a direct and proximate result of the breaches of fiduciary duties alleged  
7 herein, the Plan, and indirectly Plaintiff and the Plan's other participants and  
8 beneficiaries, lost a significant portion of their retirement investment.

9 252. Pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) and ERISA § 409(a),  
10 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plan  
11 caused by their breaches of fiduciary duties alleged in this Count.

12 **D. Count IV: Co-Fiduciary Liability.**

13 253. Plaintiff incorporates by this reference the allegations above.

14 254. This Count alleges co-fiduciary liability against the following Defendants:  
15 all Defendants (the "Co-Fiduciary Defendants").

16 255. As alleged above, during the Class Period the Co-Fiduciary Defendants were  
17 named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto*  
18 fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both.  
19 Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

20 256. As alleged above, ERISA § 405(a), 29 U.S.C. § 1105, imposes liability on a  
21 fiduciary, in addition to any liability which he may have under any other provision, for a  
22 breach of fiduciary responsibility of another fiduciary with respect to the same plan if  
23 knows of a breach and fails to remedy it, knowingly participates in a breach, or enables a  
24 breach. The Co-Fiduciary Defendants breached all three provisions.

25 257. **Knowledge of a Breach and Failure to Remedy.** ERISA § 405(a)(3), 29  
26 U.S.C. § 1105, imposes co-fiduciary liability on a fiduciary for a fiduciary breach by  
27 another fiduciary if, he has knowledge of a breach by such other fiduciary, unless he  
28 makes reasonable efforts under the circumstances to remedy the breach. Each Defendant

1 knew of the breaches by the other fiduciaries and made no efforts, much less reasonable  
2 ones, to remedy those breaches. In particular, they did not communicate their knowledge  
3 of the Company's improper activity to the other fiduciaries.

4 258. Countrywide, through its officers and employees, engaged in highly risky  
5 and inappropriate business practices and potentially unlawful conduct, withheld material  
6 information from the market, and profited from such practices, and, thus, knowledge of  
7 such practices is imputed to Countrywide as a matter of law.

8 259. Because Defendants knew of the Company's failures, potentially unlawful  
9 conduct and inappropriate business practices, they also knew that the Defendants were  
10 breaching their duties by continuing to invest in Company stock. Yet, they failed to  
11 undertake any effort to remedy these breaches. Instead, they compounded them by  
12 downplaying the significance of Countrywide's failed, inappropriate and potentially  
13 unlawful business practices, and obfuscating the risk that the practices posed to the  
14 Company, and, thus, to the Plan.

15 260. **Knowing Participation in a Breach.** ERISA § 405(a)(1), 29 U.S.C.  
16 § 1105(1), imposes liability on a fiduciary for a breach of fiduciary responsibility of  
17 another fiduciary with respect to the same plan if he participates knowingly in, or  
18 knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing  
19 such act or omission is a breach. Countrywide knowingly participated in the fiduciary  
20 breaches of the Defendants in that it benefited from the sale or contribution of its stock at  
21 prices that were disproportionate to the risks for the Plan's participants. Likewise, the  
22 Monitoring Defendants knowingly participated in the breaches of the Investment and  
23 Administrative Committee Defendants because, as alleged above, they had actual  
24 knowledge of the facts that rendered Countrywide stock an imprudent retirement  
25 investment and yet, ignoring their oversight responsibilities, permitted the Defendants to  
26 breach their duties.

27 261. **Enabling a Breach.** ERISA § 405(a)(2), 29 U.S.C. § 1105(2), imposes  
28 liability on a fiduciary if by failing to comply with ERISA § 404(a)(1), 29 U.S.C.

1 §1104(a)(1), in the administration of his specific responsibilities which give rise to his  
2 status as a fiduciary, he has enabled another fiduciary to commit a breach.

3 262. The Monitoring Defendants' failure to monitor the Defendants, particularly  
4 the Investment and Administrative Committee Defendants, enabled that committee to  
5 breach their duties.

6 263. As a direct and proximate result of the breaches of fiduciary duties alleged  
7 herein, the Plan, and indirectly Plaintiff and the Plan's other participants and  
8 beneficiaries, lost well over one hundred million dollars of retirement savings.

9 264. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a),  
10 1132(a)(2) and (a)(3), the Co-Fiduciary Defendants are liable to restore the losses to the  
11 Plan caused by their breaches of fiduciary duties alleged in this Count and to provide  
12 other equitable relief as appropriate.

13 **E. Count V: Knowing Participation in a Breach of Fiduciary Duty.**

14 265. Plaintiff incorporates the allegations contained in the previous paragraphs of  
15 this Complaint as if fully set forth herein.

16 266. To the extent that Countrywide is found not to have been fiduciary or to  
17 have acted in a fiduciary capacity with respect to the conduct alleged to have violated  
18 ERISA, Countrywide knowingly participated in the breaches of those Defendants who  
19 were fiduciaries and acted in a fiduciary capacity and as such is liable for equitable relief  
20 as a result of participating in such breaches.

21 267. Countrywide benefited from the breaches by discharging its obligations to  
22 make contributions to the Plan in amounts specified by the Plan, contributing  
23 Countrywide stock to the Plan while the value of the stock was inflated as the result of  
24 Countrywide's highly risky and improper business practices, and providing the market  
25 with materially misleading statements and omissions. Accordingly, Countrywide may be  
26 required to disgorge this benefit or a constructive trust should be imposed on treasury  
27 shares of Countrywide stock which would have been contributed to the Plan, but for  
28 Countrywide's participation in the foregoing breaches of fiduciary duty.

## XII. CAUSATION

1  
2 268. The Plan suffered enormous losses because substantial assets of the Plan  
3 were imprudently invested or allowed to be invested by Defendants in Countrywide stock  
4 during the Class Period, in breach of Defendants' fiduciary duties.

5 269. Defendants are liable for the Plan's losses in this case because: (a) most of  
6 the Plan's investment in Countrywide stock was the result of the Defendants' decisions to  
7 invest Employer Matching Contributions in the Plan in Countrywide stock and (b) as to  
8 the portion of Plan's assets invested in Countrywide stock as a result of participant  
9 contributions, the Defendants are liable for these losses because they failed to take the  
10 necessary and required steps to ensure effective and informed independent participant  
11 control over the investment decision-making process, as required by ERISA § 404(c), 29  
12 U.S.C. § 1104(c), and the regulations promulgated thereunder.

13 270. The Defendants also are liable for losses that resulted from their decision to  
14 invest a majority of the assets of the Plan in Countrywide stock rather than cash or other  
15 investment options, and clearly prudent under the circumstances presented here.

16 271. Had the Defendants properly discharged their fiduciary and co-fiduciary  
17 duties, including the monitoring and removal of fiduciaries who failed to satisfy their  
18 ERISA-mandated duties of prudence and loyalty, eliminating Countrywide stock as an  
19 investment alternative when it became imprudent, and divesting the Plan of Countrywide  
20 stock when maintaining such an investment became imprudent, the Plan would have  
21 avoided some or all of the losses that it, and indirectly, the participants suffered.

## XIII. REMEDY FOR BREACHES OF FIDUCIARY DUTY

22  
23 272. The Defendants breached their fiduciary duties in that they knew or should  
24 have known the facts as alleged above, and therefore knew or should have known that the  
25 Plan's assets should not have been invested in Countrywide stock during the Class  
26 Period.

27 273. As a consequence of the Defendants' breaches, the Plan suffered significant  
28 losses.

1           274. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) authorizes a plan participant to  
2 bring a civil action for appropriate relief under ERISA § 409, 29 U.S.C. § 1109. Section  
3 409 requires “any person who is a fiduciary. . . who breaches any of the. . . duties  
4 imposed upon fiduciaries. . . to make good to such plan any losses to the plan. . . .”  
5 Section 409 also authorizes “such other equitable or remedial relief as the court may  
6 deem appropriate. . . .”

7           275. With respect to calculation of the losses to the Plan, breaches of fiduciary  
8 duty result in a presumption that, but for the breaches of fiduciary duty, the Plan would  
9 not have made or maintained their investments in the challenged investment and, instead,  
10 prudent fiduciaries would have invested the Plan’s assets in the most profitable  
11 alternative investment available to them. Alternatively, losses may be measured not only  
12 with reference to the decline in stock price relative to alternative investments, but also by  
13 calculating the additional shares of Countrywide stock that the Plan would have acquired  
14 had the Plan fiduciaries taken appropriate steps to protect the Plan. The Court should  
15 adopt the measure of loss most advantageous to the Plan. In this way, the remedy  
16 restores the Plan’s lost value and puts the participants in the position they would have  
17 been in if the Plan had been properly administered.

18           276. Plaintiff and the Class are therefore entitled to relief from the Defendants in  
19 the form of: (a) a monetary payment to the Plan to make good to the Plan the losses to the  
20 Plan resulting from the breaches of fiduciary duties alleged above in an amount to be  
21 proven at trial based on the principles described above, as provided by ERISA § 409(a),  
22 29 U.S.C. § 1109(a); (b) injunctive and other appropriate equitable relief to remedy the  
23 breaches alleged above, as provided by ERISA §§ 409(a), 502(a)(2) and (3), 29 U.S.C. §§  
24 1109(a), 1132(a)(2) and (3); (c) injunctive and other appropriate equitable relief pursuant  
25 to ERISA § 502(a)(3), 29 U.S.C. 1132(a)(3), for knowing participation by a non-  
26 fiduciary in a fiduciary breach; (d) reasonable attorney fees and expenses, as provided by  
27 ERISA § 502(g), 29 U.S.C. § 1132(g), the common fund doctrine, and other applicable  
28 law; (e) taxable costs and interest on these amounts, as provided by law; and (6) such

1 other legal or equitable relief as may be just and proper.

2 277. Under ERISA, each Defendant is jointly and severally liable for the losses  
3 suffered by the Plan in this case.

#### 4 **XIV. CLASS ACTION ALLEGATIONS**

5 278. **Class Definition.** Plaintiff brings this action as a class action pursuant to  
6 Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of  
7 Plaintiff and the following class of persons similarly situated (the "Class"):

8 All persons, other than Defendants, who were participants in or  
9 beneficiaries of the Plan at any time between January 31, 2006 and the  
10 present, and whose accounts included investments in Countrywide  
11 stock.

12 279. **Class Period.** The fiduciaries of the Plan knew or should have known at  
13 least by January 31, 2006 that the Company's material weaknesses were so pervasive that  
14 Countrywide stock could no longer be offered as a prudent investment for the retirement  
15 Plan.

16 280. **Numerosity.** The members of the Class are so numerous that joinder of all  
17 members is impracticable. While the exact number of Class members is unknown to  
18 Plaintiff at this time, and can only be ascertained through appropriate discovery, Plaintiff  
19 believes there are, based on the Plan's Form 5500 for Plan year 2005, 46,047 active  
20 participants in the Plan who participated in, or were beneficiaries of, the Plan during the  
21 Class Period.

22 281. **Commonality.** Common questions of law and fact exist as to all members  
23 of the Class and predominate over any questions affecting solely individual members of  
24 the Class. Among the questions of law and fact common to the Class are:

25 (a). whether Defendants each owed a fiduciary duty to Plaintiff and  
26 members of the Class;

27 (b). whether Defendants breached their fiduciary duties to Plaintiff and  
28 members of the Class by failing to act prudently and solely in the interests of

1 the Plan's participants and beneficiaries;

2 (c). whether Defendants violated ERISA; and

3 (d). whether the Plan has suffered losses and, if so, what is the proper  
4 measure of damages.

5 282. **Typicality.** Plaintiff's claims are typical of the claims of the members of the  
6 Class because: (1) to the extent Plaintiff seeks relief on behalf of the Plan pursuant to  
7 ERISA § 502(a)(2), his claim on behalf of the Plan is not only typical to, but identical to  
8 a claim under this section brought by any Class member; and (2) to the extent Plaintiff  
9 seeks relief under ERISA § 502(a)(3) on behalf of himself for equitable relief, that relief  
10 would affect all Class members equally.

11 283. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the  
12 members of the Class and has retained counsel competent and experienced in class  
13 action, complex, and ERISA litigation. Plaintiff has no interests antagonistic to or in  
14 conflict with those of the Class.

15 284. **Rule 23(b)(1)(A) Requirements.** Class action status in this ERISA action  
16 is warranted under Rule 23(b)(1)(A) because prosecution of separate actions by the  
17 members of the Class would create a risk of inconsistent or varying adjudications with  
18 respect to individual members of the Class which would establish incompatible standards  
19 of conduct for the party opposing the class.

20 285. **Rule 23(b)(1)(B) Requirements.** Class action status in this ERISA action is  
21 warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the  
22 members of the Class would create a risk of adjudications with respect to individual  
23 members of the Class which would, as a practical matter, be dispositive of the interests of  
24 the other members not parties to the actions, or substantially impair or impede their  
25 ability to protect their interests.

26 286. **Other Rule 23(b) Requirements.** Class action status is also warranted  
27 under the other subsections of Rule 23(b) because: (i) prosecution of separate actions by  
28 the members of the Class would create a risk of establishing incompatible standards of

1 conduct for Defendants; (ii) Defendants have acted or refused to act on grounds generally  
2 applicable to the Class, thereby making appropriate final injunctive, declaratory, or other  
3 appropriate equitable relief with respect to the Class as a whole; and (iii) questions of law  
4 or fact common to members of the Class predominate over any questions affecting only  
5 individual members and a class action is superior to the other available methods for the  
6 fair and efficient adjudication of this controversy.

7  
8 **XV. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for:

10 A. A Declaration that the Defendants, and each of them, have breached their  
11 ERISA fiduciary duties to the participants;

12 B. A Declaration that the Defendants, and each of them, are not entitled to the  
13 protection of ERISA § 404(c)(1)(B), 29 U.S.C. § 1104(c)(1)(B);

14 C. An Order compelling the Defendants to make good to the Plan all losses to  
15 the Plan resulting from Defendants' breaches of their fiduciary duties, including  
16 losses to the Plan resulting from imprudent investment of the Plan's assets, and to  
17 restore to the Plan all profits the Defendants made through use of the Plan's assets,  
18 and to restore to the Plan all profits which the participants would have made if the  
19 Defendants had fulfilled their fiduciary obligations;

20 D. Imposition of a Constructive Trust on any amounts by which any Defendant  
21 was unjustly enriched at the expense of the Plan as the result of breaches of  
22 fiduciary duty;

23 E. An Order requiring Defendants to appoint one or more independent  
24 fiduciaries to participate in the management of the Plan's investment in  
25 Countrywide stock;

26 F. Actual damages in the amount of any losses the Plan suffered;

27 G. An Order awarding costs pursuant to 29 U.S.C. § 1132(g);  
28

1 H. An Order awarding attorneys' fees pursuant to the common fund  
2 doctrine, 29 U.S.C. § 1132(g), and other applicable law; and

3 I. An Order for equitable restitution and other appropriate  
4 equitable and injunctive relief against the Defendants.

5 DATED this 8th day of January, 2008.

6 KELLER ROHRBACK L.L.P.

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