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15 Attorneys for Plaintiff Lehman
16 Brothers Holdings Inc.

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

DMR

19 LEHMAN BROTHERS HOLDINGS INC.,

20 Plaintiff,

21 v.

22 NL INC. and RPM MORTGAGE, INC.,

23 Defendants.

CASE NO.:

CV 12 3570

COMPLAINT

24 Plaintiff Lehman Brothers Holdings Inc. ("LBHI"), by and through its undersigned
25 attorneys, and for its causes of action against defendants NL Inc. ("NL") and RPM Mortgage,
26 Inc. ("RPM"), alleges and states as follows:

NATURE OF ACTION

27 1. Lehman Brothers Bank, FSB ("LBB," and collectively with LBHI, "Lehman")
28 purchased mortgage loans from NL pursuant written contracts. LBB subsequently sold certain

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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FAXED

1 of those loans to LBHI and assigned its rights under those contracts to LBHI with respect to
2 those loans. With respect to certain of these mortgage loans, NL breached representations,
3 warranties, covenants and other provisions of the contracts, requiring it to repurchase the loans
4 and/or indemnify LBHI for its losses on those loans. NL also entered into indemnification
5 agreements with respect to each of the loans, which it breached by failing to repurchase loans or
6 make required indemnification payments.
7

8 2. RPM is NL's successor and alter ego, carrying on a mere continuation of NL's
9 business. Despite demand, RPM refuses to honor NL's obligations to LBHI, for which it is
10 liable as a matter of law. By this action, LBHI seeks to recover money damages for injuries that
11 have been sustained as a result.
12

13 **PARTIES**

14 3. LBHI is a Delaware corporation with its principal place of business in New
15 York.

16 4. NL is a California corporation with its principal place of business listed as being
17 at 2175 N. California Boulevard, Suite 1000, Walnut Creek, California 94596.
18

19 5. RPM is a California corporation with its principal place of business listed as
20 being at 2175 N. California Boulevard, Suite 1000, Walnut Creek, California 94596.
21

22 **JURISDICTION AND VENUE**

23 6. This Court has jurisdiction under 28 U.S.C. § 1332 because there is complete
24 diversity of citizenship between Plaintiff LBHI and Defendants NL and RPM, and the amount
25 in controversy exceeds \$75,000, exclusive of interests and costs.

26 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because NL and
27 RPM reside in Walnut Creek, California.
28

1 8. This action arises in Contra Costa County, California. A substantial part of the
2 events or omissions which give rise to LBHI's claims occurred in Contra Costa County,
3 California.

4 FACTUAL ALLEGATIONS

5 9. Lehman engaged in the purchase and sale of mortgage loans.

6
7 10. NL engaged in mortgage lending, as well as the sale of mortgage loans in the
8 secondary market to investors such as Lehman.

9 11. NL entered into a written Loan Purchase Agreement with LBB. The Loan
10 Purchase Agreement specifically incorporated the terms and conditions of the Seller's Guide of
11 Lehman's agent at the time, Aurora Loan Services LLC ("Aurora"), which sets forth additional
12 duties and obligations of NL.

13
14 12. The Loan Purchase Agreement and the Seller's Guide set forth the duties and
15 obligations of the parties with respect to the purchase and sale of mortgage loans, including but
16 not limited to purchase price, delivery and conveyance of the mortgage loans and mortgage loan
17 documents, examination of mortgage loan files and underwriting, representations and warranties
18 concerning the parties and individual mortgage loans purchased or sold, and remedies for
19 breach.

20
21 13. NL sold a number of mortgage loans to LBB under the Loan Purchase
22 Agreement and Seller's Guide, including the loans discussed below.

23
24 14. Subsequent to such sales by NL, LBB sold all of the loans discussed below to
25 LBHI.

1 15. Subsequent to such sales, LBB assigned all of its rights and remedies under the
2 Loan Purchase Agreement and Seller's Guide to LBHI with respect to the loans discussed
3 below.

4 A. The Cambron And Solis Loans.

5 16. The Loan Purchase Agreement and Seller's Guide further specify that Lehman or
6 its agent may demand that NL repurchase, and that NL shall repurchase, mortgage loans that
7 become Early Payment Defaults.

8 17. A loan becomes an Early Payment Default under the Loan Purchase Agreement
9 and Seller's Guide in one of two ways. For loans prior-approved by the purchaser, the loan
10 becomes an Early Payment Default if the borrower fails to make the first monthly payment due
11 within 30 days of the payment's due date. For loans purchased pursuant to the seller's
12 delegated underwriting authority, eligible for delegated underwriting, or purchased in bulk
13 transactions, the loan becomes an Early Payment Default if the borrower fails to make the first
14 or second monthly payment due within 30 days of each such monthly payment's respective due
15 date. NL received delegated underwriting authority before it sold the loans described below to
16 LBB.
17
18
19

20 18. Loan ****9540 (Cambron) became an Early Payment Default because no
21 payments were ever received on the loan.

22 19. Loan ****2359 (Solis) became an Early Payment Default because the
23 borrower's first payment due to Aurora was made more than thirty days after its due date.

24 20. After receiving demands to repurchase Loans ****9540 (Cambron) and
25 ****2359 (Solis), NL entered into an Indemnification Agreement dated October 1, 2007 with
26 LBB and Aurora with respect to Loans ****9540 (Cambron) and ****2359 (Solis) (the
27
28

1 “Cambron/Solis Indemnification Agreement”). In the Cambron/Solis Indemnification
2 Agreement, NL agreed to provide indemnity for all losses, damages, costs, fees, etc. suffered on
3 the four loans, including Loans ****9540 (Cambron) and ****2359 (Solis), for a maximum
4 dollar amount of \$200,000. To secure this obligation, NL agreed to make 24 monthly payments
5 totalling \$200,000. NL agreed that if it failed to make all of its monthly payments, LBB and/or
6 Aurora could declare the Cambron/Solis Indemnification Agreement null and void, entitling
7 them to enforce all rights and remedies against NL under the Loan Purchase Agreement and
8 Seller’s Guide. The Cambron/Solis Indemnification Agreement provides that it is binding and
9 enforceable upon NL and its successors and assigns.
10

11 21. NL failed to make all of its 24 monthly payments due under the Cambron/Solis
12 Indemnification Agreement.
13

14 22. LBB and Aurora validly assigned to LBHI all rights to the Cambron/Solis
15 Indemnification Agreement with respect to Loans ****9540 (Cambron) and ****2359 (Solis).
16

17 **B. The Hallbauer Loan.**

18 23. NL entered into an Indemnification Agreement dated February 26, 2007 with
19 LBB and Aurora with respect to Loan ****8233 (Hallbauer) (the “Hallbauer Indemnification
20 Agreement”). In the Hallbauer Indemnification Agreement, NL agreed to repurchase Loan
21 ****8233 (Hallbauer) within 15 days of notice that Loan ****8233 (Hallbauer) had become at
22 least 60 days delinquent. The Hallbauer Indemnification Agreement provides that it is binding
23 and enforceable upon NL and its successors and assigns.
24

25 24. On October 15, 2007, NL was notified that Loan ****8233 (Hallbauer) had
26 become at least 60 days delinquent, and demanded that NL repurchase it within 15 days. NL
27
28

1 failed to ever repurchase Loan ****8233 (Hallbauer), or provide any indemnity for losses on
2 the loan.

3 25. The Hallbauer Indemnification Agreement was validly assigned to LBHI by
4 LBB and Aurora.

5 **C. RPM's Liability for NL's Debts**

6 26. Though separately incorporated, RPM is the successor to and alter ego of NL.

7 27. RPM has the same CEO that NL had: Rob Hirt.

8 28. RPM has the same President that NL had: Tracey Hirt.

9 29. Upon information and belief, RPM has or had the same shareholders as NL: Rob
10 Hirt and Tracey Hirt.
11

12 30. RPM's business is conducted from the same address using the same telephone
13 number as NL.
14

15 31. Upon information and belief, business operations under RPM's name began
16 shortly after business operations under NL's name ceased. RPM simply carried on NL's
17 business operations.
18

19 32. The name "RPM" was a registered assumed name or "d/b/a" of NL that NL used
20 in it business. NL did business from the website www.rpm-mortgage.com, and NL employees
21 used email addresses with the suffix "@rpm-mortgage.com." RPM currently uses the website
22 www.rpm-mtg.com and its employees use email addresses with the suffix "@rpm-mtg.com."
23

24 33. Upon information and belief, the shareholders of NL and RPM are using RPM to
25 continue NL's business while seeking to avoid NL's debts and liabilities.

26 34. NL and RPM have been used as mere shells, instrumentalities, and conduits for a
27 single business which has been undertaken by the common shareholders of each.
28

FIRST CLAIM FOR RELIEF

(Breach of Contract – Loan Purchase Agreement and Seller’s Guide)

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2
3 35. LBHI hereby repeats and realleges the above allegations of this Complaint as if
4 fully set forth herein.

5 36. The Loan Purchase Agreement and the Seller’s Guide are a valid and enforceable
6 contract that is binding upon NL.

7 37. Lehman, Lehman’s agents and any and all assignees of Lehman’s rights have
8 substantially performed all of their obligations under the Loan Purchase Agreement and Seller’s
9 Guide.
10

11 38. As described above, NL has breached the Agreement and Seller’s Guide by (a)
12 breaching the representations, warranties, and/or covenants, and (b) refusing or otherwise
13 failing to repurchase the mortgage loan affected by the breached representations, warranties
14 and/or covenants, and/or refusing to indemnify Lehman.
15

16 39. NL’s breaches of the Agreement and Seller’s Guide resulted in actual and
17 consequential damages to LBHI in an amount to be proven at trial.

18 40. RPM is liable for NL’s debts to LBHI because RPM is NL’s successor and alter
19 ego, as explained above.
20

SECOND CLAIM FOR RELIEF

(Breach of Contract – Indemnification Agreement)

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22 41. LBHI hereby repeats and realleges the above allegations of this Complaint as if
23 fully set forth herein.
24

25 42. The Cambron/Solis Indemnification Agreement was a valid and enforceable
26 contract binding upon NL and its successors and assigns.
27
28

1 43. Lehman, Lehman's agents and any and all assignees of Lehman's rights have
2 substantially performed all of their obligations under the Cambron/Solis Indemnification
3 Agreement.

4 44. As described above, NL has breached the Cambron/Solis Indemnification
5 Agreement.

6 45. RPM is liable for NL's debts to LBHI because RPM is NL's successor and alter
7 ego, as set forth above.

8 46. NL's and RPM's breaches of the Cambron/Solis Indemnification Agreement and
9 breaches with respect to the Cambron and Solis loans resulted in actual and consequential
10 damages to LBHI in an amount to be proven at trial.
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13 **THIRD CLAIM FOR RELIEF**
14 (Breach of Contract – Indemnification Agreement)

15 47. LBHI hereby repeats and realleges the above allegations of this Complaint as if
16 fully set forth herein.

17 48. The Hallbauer Indemnification Agreement is a valid and enforceable contract
18 binding upon NL and its successors and assigns.

19 49. Lehman, Lehman's agents and any and all assignees of Lehman's rights have
20 substantially performed all of their obligations under the Hallbauer Indemnification Agreement.
21

22 50. As described above, NL has breached the Hallbauer Indemnification Agreement.

23 51. RPM is liable for NL's debts to LBHI because RPM is NL's successor and alter
24 ego, as set forth above.

25 52. NL's and RPM's breaches of the Hallbauer Indemnification Agreement resulted
26 in actual and consequential damages to LBHI in an amount to be proven at trial.
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PRAYER FOR RELIEF

1
2 WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor
3 and against NL and RPM, as follows:

4 (a) For all damages arising from or relating to NL's and RPM's breaches of contract,
5 in an amount to be proven at trial;

6 (b) For recoverable interest;

7 (c) For the costs and expenses of suit incurred by LBHI herein, including attorneys
8 fees and costs and expert witness fees; and
9

10 (d) For such other relief as this Court deems just and proper.
11
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13

14 DATED: July 6, 2012

FULBRIGHT & JAWORSKI L.L.P.

15
16
17 By: 
18 Matthew D. Spohn (No. 269636)

19 Attorney for Plaintiff Lehman Brothers
20 Holdings Inc.
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JS 44 CAND (Rev. 12/11)

CIVIL COVER SHEET

DPD

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

I. (a) PLAINTIFFS
 LEHMAN BROTHERS HOLDINGS INC.

(b) County of Residence of First Listed Plaintiff New York, NY
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Matthew D. Spohn, FULBRIGHT & JAWORSKI L.L.P., 1200 17TH Street, Suite 1000, Denver, CO 80202. (303) 801-2700

DEFENDANTS
 NL INC. and RPM MORTGAGE, INC.,

County of Residence of First Listed Defendant
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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ADR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. sec. 1332

Brief description of cause:
 Breach of loan purchase agreement and related contracts

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** 75,001.00 **CHECK YES only if demanded in complaint: JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): **JUDGE** _____ **DOCKET NUMBER** _____

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2) (Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

DATE 07/06/2012 **SIGNATURE OF ATTORNEY OF RECORD** *[Signature]*

012-3570 DMR

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