UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ***Plaintiff*,** ***-versus-*** **BARCLAYS CAPITAL, INC.; BARCLAYS GROUP US INC.; BARCLAYS US LLC; BARCLAYS BANK PLC; BARCLAYS PLC; BCAP LLC; SECURITIZED ASSET BACKED RECEIVABLES LLC; SUTTON FUNDING LLC; PAUL K. MENEFEE; and JOHN T. CARROLL,** ***Defendants*.**	Civil Action No.: 16-CV-7057 (KAM/RLM)

AMENDED COMPLAINT OF THE UNITED STATES OF AMERICA

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Plaintiff the United States of America alleges and complains against Defendants Barclays Capital, Inc., Barclays Group US Inc., Barclays US LLC, Barclays Bank PLC, Barclays PLC, BCAP LLC, Securitized Asset Backed Receivables LLC, Sutton Funding LLC (collectively, "Barclays" or "the Corporate Defendants"), Paul K. Menefee, and John T. Carroll as follows:

SUMMARY OF CLAIMS

1. Between December 1, 2005, and December 31, 2007 (the "Relevant Period"), Barclays engaged in a fraudulent scheme to sell tens of billions of dollars of residential mortgage-backed securities ("RMBS"), in which it repeatedly deceived investors about the characteristics of the loans backing those trusts. This action relates to 36 of those securitizations ("the Subject Deals"), which are identified in the Table of Contents and on the annexed Table 1, and which Barclays sponsored, issued, underwrote, managed, or offered during the Relevant Period.

2. Barclays securitized over $31 billion worth of mortgage loans in the Subject Deals, which proved to be catastrophic failures. More than half of the underlying loans defaulted, causing investors in those deals to lose many billions of dollars, with hundreds of millions more in losses projected during the remaining life of the deals. Even many investors in the AAA-rated tranches of these securitizations, which were rated as safe as investments in U.S. Treasury bonds, have suffered or are projected to suffer significant losses.

3. In publicly-filed offering documents, in other deal transaction documents, and in direct communications with investors and rating agencies, Barclays systematically and intentionally misrepresented key characteristics of the loans it included in the Subject Deals. The borrowers whose loans backed the Subject Deals were significantly less creditworthy than Barclays represented to investors, and those loans defaulted at exceptionally high rates early in the life of the deals. In addition, the mortgaged properties were systematically worth less than what

Barclays represented to investors, meaning there was not enough equity in the collateral to protect investors from loss when loans defaulted.

4. As Barclays knew, the origination standards of the lenders issuing these mortgages (companies such as Fremont, New Century, WMC, Countrywide, and IndyMac) were severely deteriorating during the Relevant Period, resulting in loans to borrowers with no ability to repay. Indeed, Barclays knew that such companies were routinely originating fraudulent loans, including "stated documentation" loans rife with misrepresentations. Those companies then pushed to have Barclays buy as many of their shoddy loans as possible in order to shift the risk of default from the originators onto Barclays' RMBS investors.

5. Barclays was a willing and active participant in this business, eagerly seeking to do more and more deals, and to securitize more and more loans, in order to increase its profits and its share of the RMBS market. Indeed, in its relentless pursuit of new loans to feed its securitization machine, and in its active collaboration with originators to maximize loan volume, Barclays not only acquired and securitized billions of dollars of loans it knew had material defects, but it also extended billions of dollars in financing to lenders it knew were originating loans without regard to the ability of the borrowers to repay them (including, in many cases, loans that were fraudulent). This pump-priming activity contributed to the housing bubble and to the ensuing crash, whose effects devastated the world economy in the Financial Crisis of 2008.

6. In selling certificates in the Subject Deals, Barclays repeatedly assured investors that it had excluded "*unacceptable*" loans and that the loans in the deals had been underwritten in accordance with loan origination guidelines intended to ensure the borrowers' ability to pay. It represented to investors that the appraisals accompanying the mortgaged properties were reliable and that the properties had sufficient value to avoid loss in the event of default. It told investors

that it had conducted "*robust*," "*thorough*," and "*comprehensive*" due diligence on the loans it securitized, and that it did not securitize non-compliant, delinquent, or "*scratch and dent*" loans.

7. These statements were false. In reality, Barclays' due diligence on the Subject Deals was a sham. When it did not skip due diligence altogether, Barclays routinely ignored or kept to itself the results of that due diligence, from which it knew that a considerable percentage of the loans in the Subject Deals were not as Barclays represented to investors.

8. Barclays' due diligence vendors informed it that large percentages of the loans they reviewed did not comply with underwriting guidelines or with the relevant law, or involved borrowers who lacked the ability to repay. They also informed Barclays that the appraised values of significant percentages of the mortgaged properties were overstated and that thousands of those properties were underwater – that is, they were worth less than the amount of the liens encumbering them. These vendors described some of these securitized loans as "*craptacular*," others as "*scariest collateral*," and others as having the "*distinct aroma of default.*"

9. Barclays' employees reviewed these due diligence results and, in many cases, portions of the loan files, and they saw for themselves that the pools were riddled with materially defective loans that should not have been included in the deals. Defendant Menefee, the head Barclays banker in charge of due diligence on the subprime deals, observed that one loan pool was "*about as bad as it can be*" and another "*scares the sh*t out of me.*" He complained about a Wells Fargo pool that "*we have to eat their sh*t loans.*" Meanwhile, a Barclays salesperson described *"the deluge of Fremont garbage being put out there."*

10. Despite this knowledge, Barclays securitized many thousands of loans (worth billions of dollars) that its vendors had graded as materially defective and that should not have been included in the deals. For thousands more, Barclays directed its vendors to change the grades

on defective loans for no legitimate reason, before it proceeded to securitize them. On a number of occasions, Barclays even recycled into its deals loans it had kicked out of previous deals due to their defects, without conducting any additional due diligence on the loans. And on thousands of occasions, Barclays left in loans whose property valuations were overstated to a degree that was "out of tolerance" under its own metrics. Barclays' strategy throughout was to "*jam things in, you know, bob and weave and hope for the best*."

11. Barclays sought to maximize the number of loans securitized and to minimize the number of loans kicked from each deal by knowingly securitizing loans that violated representations to investors. Its principal aim in conducting due diligence was not to validate the truth and accuracy of its representations to investors but to protect its own bottom line and its relationship with the loan originators whose substandard products were the lifeblood of Barclays' securitization machine.

12. Barclays viewed these originators (and not the RMBS investors) as its true clients, and it repeatedly bent over backwards to please them. As Menefee said in a telephone call to one of the originators, "*I don't make any money kicking out loans, I just don't.*" He repeatedly assured originators that "*you'll be happy with the pull-through rate*," "*we are embarrassed by bad pull-throughs*," "*[we want] to accept as many loans as possible*," and "*we want to be known as people who come through for you.*" In fact, Barclays frequently stipulated with originators to limit the size or composition of its due diligence selections, and on a number of occasions it even agreed to limit the percentage of loans that could be kicked out of a deal.

13. Barclays did kick some loans from the Subject Deals. Its aim in doing so, however, was not to protect its investors from the risk of loss but rather to serve its own interests and to make it appear that it was conducting meaningful due diligence. Indeed, Barclays' leadership

congratulated itself at management meetings for having persuaded rating agencies that its due diligence practices were comprehensive and effective, as a result of which the rating agencies required less credit enhancement in the deals, which made them more profitable for Barclays and riskier for investors.

14. Barclays also knowingly securitized in the Subject Deals thousands of loans it knew were "scratch and dent," while repeatedly lying to investors that it never securitized such loans on its subprime or Alt-A shelves. Indeed, even when loans were already delinquent or in default by the time a deal closed, it did not seem to matter to Barclays, which securitized thousands of such loans in the Subject Deals.

15. When asked about a group of 40 such delinquent loans, Defendant Carroll, the head subprime trader at Barclays, instructed Menefee to "*just leave them in.*" Menefee later stated that "*[y]ou have to know 90% of the reason something like this would default is because of fraud*," and he even claimed he could prove that all of the delinquent loans were fraudulent. But within weeks of complying with Carroll's instruction to "*leave them in the deal*," Menefee falsely represented to investors and rating agencies on call after call that the deal (SABR 2006-FR3) did not contain any such delinquent loans.

16. Carroll justified his instruction to Menefee to include the millions of dollars of defaulted loans in SABR 2006-FR3 by arguing that securitizing the delinquent loans would save Barclays one million dollars, even if it made it more likely that investors would end up bearing the loss. Indeed, as Menefee reasoned after learning that a different group of delinquent loans securitized in another deal (SABR 2007-BR1) "*have just gone straight down*," Barclays was "*willing to take it on the chin from [an investor] because we did the right thing for the firm by*

securitizing as many loans" as possible. Or as Carroll put it, "*if we pull them out of the deal, you know, we take on 100% of the risk; we've sold 97% of the risk in the deal. Just leave them in.*"

17. Even when investors in SABR 2007-BR1 called upon Barclays, post-securitization, to buy out from the deal loans that they discovered were already in default before the deal issued, Barclays refused, deciding to protect its own bottom line despite knowing full well that this decision would expose investors to significant risk of harm. As Menefee put it, "*we can make a corporate decision to buy these loans out, but it's going to be very costly and it is an extraordinarily slippery slope*." He described the operative mentality at Barclays when he told Carroll, in connection with SABR 2007-BR2, that "*we ... did the right thing for the firm, securitized a good portion of the loans that were 30-59 days delinquent.*"

18. Barclays knew that the defaulted and delinquent loans securitized in its deals had numerous underwriting defects. As Barclays' own due diligence consultant concluded in a diagnostic review of hundreds of securitized loans that had gone into default almost immediately after the deals issued, "*an overwhelming percentage of [those] loans exhibit material deficiencies,*" and "*essentially default was inevitable*." The consultant commented that for many of these loans, which had contributed to an "*unprecedented default rate*," the originator, Fremont, "*ignored guidelines*" and had given "*no regard for borrower's ability to repay debt*."

19. In addition to securitizing thousands of loans with defects discovered in due diligence, Barclays knew that the loans it securitized, but had not reviewed in due diligence, were similarly riddled with material defects. Barclays conducted due diligence on only some of the loans it securitized, and it knew that the criteria it used to choose loans for due diligence did not identify for review or exclusion all loans in the pools that violated its representations, or even all

fraudulent loans. Even before the Relevant Period, Barclays' management expressed concern that "*the process is not capturing some loans that should be kicked out.*"

20. To make matters worse, Barclays often loosened its selection criteria to satisfy originator demands for limits on due diligence sample sizes and kickouts, as a result of which Barclays securitized billions of dollars' worth of loans, without due diligence review, that it had itself identified as risky enough to merit review. It then misled investors and rating agencies, telling them that its selection criteria were far more comprehensive than they actually were.

21. Barclays found exceedingly high rates of material defects in its due diligence samples – in some cases more than 50%. Barclays knew from these high defect rates that the unreviewed portions of the pools also contained large numbers of defective loans. Nevertheless, Barclays continued to make representations about the loan pools it knew were false, and it repeatedly misled investors about the due diligence results on the Subject Deals.

22. On some loan pools, including all three of the pools securitized in SABR 2007-BR5, Defendants dispensed with due diligence altogether. For example, as New Century was teetering towards bankruptcy in early 2007, Defendants decided that, without a solvent counterparty to which to put back defective loans, it was not worth the cost or effort to conduct due diligence on the pools. Defendants determined to "*tell the diligence guys to stand down*" in order to "*save the money*," and they instructed their vendor to cancel a due diligence job that had been scheduled for the following week. Defendants took this decision despite being well aware of significant problems with the New Century loan pools, which Menefee and Carroll agreed "*look[ed] like sh*t*." Weeks later, Barclays doctored an investor presentation to falsely make it appear as if due diligence had actually been performed on SABR 2007-BR5.

23. Throughout the Relevant Period, Defendants at no point had a good faith belief that they were kicking out all of the "*unacceptable*" loans that they assured investors they were removing from the deals, or that the representations they were making as to the characteristics of the securitized collateral were actually true. Instead of ensuring that their representations to investors as to the characteristics of the loans were accurate and transparent, so that investors could make properly informed investment decisions, Defendants repeatedly misled investors and kept to themselves critical information about the loans in the deals, knowingly putting those investors at risk of harm.

24. Barclays sold certificates in the Subject Deals to a wide range of investors that included, among other entities: financial institutions (including many that were federally-insured), government-sponsored entities (such as Fannie Mae and Freddie Mac), federal home loan banks, credit unions, pension plans, charitable and religious organizations, and university endowments. Many of these investors suffered devastating losses.

25. The United States now brings this action pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 498, tit. IX, § 951, *codified as amended at* 12 U.S.C. § 1833a, to recover civil penalties and other appropriate relief from Barclays on account of its fraudulent and illegal conduct, including its intentional misrepresentations and material omissions to investors about the Subject Deals.

26. The United States further seeks to recover civil penalties under FIRREA from Menefee and Carroll individually, on account of their fraudulent and illegal conduct, including their intentional misrepresentations and material omissions about the seven RMBS identified on the annexed Table 2 ("the Menefee/Carroll Deals"). Barclays sponsored, issued, underwrote,

managed, and offered the Menefee/Carroll Deals during the Relevant Period, with Menefee and Carroll's direct involvement.

27. The United States seeks from Defendants the maximum civil penalties available under FIRREA, and other appropriate relief, for: (a) mail fraud affecting federally-insured financial institutions; (b) wire fraud affecting federally-insured financial institutions; (c) executing or attempting to execute a scheme to defraud financial institutions; (d) executing or attempting to execute a scheme to obtain money, funds, credits, assets, securities, or other property owned by, or under the custody or control of, financial institutions, by false or fraudulent pretenses, representations, or promises; (e) executing a scheme to fraudulently benefit from a transaction with a financial institution (Corporate Defendants only); and (f) making false statements to influence the action of certain financial institutions (Corporate Defendants only). *See* 12 U.S.C. § 1833a; 18 U.S.C. §§ 1005, 1014, 1341, 1343, and 1344.

THE PARTIES

28. Plaintiff is the United States of America, a body politic and sovereign. It brings this action in its own right pursuant to FIRREA, 12 U.S.C. § 1833a.

29. Defendant Barclays Capital, Inc. ("Barclays Capital") is a Connecticut corporation with its headquarters and principal place of business currently located at 745 Seventh Avenue, New York, NY 10119. Barclays Capital's direct parent and sole stockholder is Defendant Barclays Group US Inc., which in turn is wholly owned by Defendant Barclays US LLC, a direct subsidiary of Defendant Barclays Bank PLC, and it is ultimately owned by Defendant Barclays PLC. Barclays Capital is a registered securities broker-dealer with the United States Securities Exchange Commission ("SEC") and a 4(k)(4)(E) securities subsidiary under the Bank Holding Company Act. It served as the lead or managing co-lead underwriter for each Subject Deal.