SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

BASIS YIELD ALPHA FUND (MASTER) Plaintiff, v. THE GOLDMAN SACHS GROUP, INC., GOLDMAN SACHS & CO., GOLDMAN SACHS INTERNATIONAL, and GOLDMAN SACHS & PARTNERS AUSTRALIA PTY LTD Defendants.	Index No. Date Index No. Purchased: **SUMMONS**

To the above named Defendants:

Goldman Sachs Group, Inc.,
200 West Street
New York, New York 10282

Goldman Sachs & Co.
200 West Street
New York, New York 10282

Goldman Sachs International
200 West Street
New York, New York 10282

Goldman Sachs & Partners Australia Pty Ltd
200 West Street
New York, New York 10282

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial. The basis of venue is CPLR 503(c) and (d). The principle office of both Goldman Sachs Group, Inc. and Goldman Sachs & Co. is located in the County of New York.

Dated: October 27, 2011

LEWIS BAACH PLLC

By:
ERIC LEWIS
BRUCE GRACE
1201 F Street NW
Suite 500
Washington, D.C. 20004
Telephone: (202) 833 8900
Fax: (202) 466 5738
eric.lewis@lewisbaach.com
bruce.grace@lewisbaach.com

Attorneys for Plaintiff
BASIS YIELD ALPHA FUND (MASTER)

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Basis Yield Alpha Fund (Master) ("BYAFM"), through its attorneys, Lewis Baach PLLC, as and for its complaint, alleges:

Nature of Action

1. BYAFM brings this action against Goldman Sachs & Co. and affiliated companies ("Goldman") for knowingly making materially false and misleading statements and omissions in connection with the sale of a security issued by a collateralized debt obligation ("CDO") based upon subprime residential home mortgages, known as Point Pleasant 2007-1, Ltd ("Point Pleasant"), and the entry into two credit default swaps ("CDS") that referenced AAA and AA rated securities from a similar CDO known as Timberwolf 2007-1, Ltd ("Timberwolf"). Within weeks after BYAFM entered into these transactions, they precipitously declined in value, as Defendants knew and intended they would. As a result, BYAFM lost more than $67 million plus consequential damages.

2. By no later than late 2006, based on its extensive involvement in and detailed knowledge of the subprime residential home mortgages market, Goldman, at its highest levels,

had arrived at the informed and firm view that the value of securities in this market would likely go into sharp decline in the near future. This situation presented both a problem and an opportunity for Goldman. The problem was that Goldman held a large portfolio of such securities, which would decline in value as the market fell, and Goldman needed to offload these securities onto third parties. The opportunity was the potential profit that Goldman could make by shorting such securities. Goldman devised a plan that both addressed its problem and took advantage of its opportunity. Putting profits before integrity and acting to the detriment of its own clients, Goldman constructed a number of new CDO offerings in early 2007 based on securities Goldman deliberately selected for their poor quality and likely failure -- many from its own inventory -- and marketed them aggressively to its clients while at the same time shorting the market in order to profit at its clients' expense. Goldman used these new CDOs as one vehicle for shorting the market.

3. The Point Pleasant and Timberwolf offerings were a key part of this Goldman strategy, and provided a vehicle for Goldman to unload its toxic inventory and to profit from the decline in value of the very securities it was recommending that its clients purchase.

4. Prior to the Timberwolf transaction with BYAFM, Goldman's internal appraisal was that the Timberwolf security was significantly overvalued at the price at which Goldman was offering Timberwolf to BYAFM, and that the constituent securities making up Timberwolf were already significantly impaired and were highly likely to decline substantially in value in the future. Notwithstanding this assessment, Goldman falsely represented Timberwolf to BYAFM as a good investment, fairly priced and well suited to BYAFM's investment portfolio.

5. In the same week that Goldman was formalizing its Timberwolf deal with BYAFM, a senior executive with Goldman wrote that Timberwolf was "one shitty deal" – an

internal assessment that accurately encapsulated Goldman's real view and one that Goldman concealed from BYAFM. Despite this internal appraisal and notwithstanding detailed analyses prepared by Goldman insiders about the true value of these securities and a resulting concern about the representations Goldman was making to potential investors, Goldman nevertheless aggressively solicited its clients, including BYAFM, to purchase these offerings, and in doing so knowingly made false and misleading statements of material fact and knowingly failed to disclose material information that Goldman was required to disclose so its statements would not be misleading.

6. The Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs of the United States Senate (the "PSI") conducted an extensive investigation of Goldman's actions in constructing and marketing Timberwolf and other securities. The PSI reviewed numerous internal Goldman e-mails and other documents, questioned various Goldman managers, employees and consultants, and on April 12, 2011, issued a report that contains an extensive discussion of Timberwolf (the "PSI Report").

7. The PSI made a number of determinations about Goldman's actions in relation to Timberwolf pertinent to this Complaint. These include:

a. Goldman deliberately constructed Timberwolf using CDO assets that began to fall in value almost as soon as the Timberwolf security was issued in late March 2007, yet solicited clients to buy Timberwolf.

b. Goldman took a substantial portion of the short side of Timberwolf, bet Timberwolf would fall in value, and profited from its short position at the expense of the clients to whom it sold Timberwolf.

c. When marketing Timberwolf, Goldman failed to disclose its internal marks which showed Timberwolf losing significant value and did not disclose Goldman's short position.

d. Senior Goldman executives knew the firm was selling poor quality assets at inflated prices.

e. Goldman knowingly sold Timberwolf securities to clients at prices well above its own book value and then, often within days or weeks of a sale, marked down the value of Timberwolf, causing clients to incur quick losses and requiring some, including BYAFM, to post higher margin or cash collateral.

f. Goldman falsely represented that the securities that made up Timberwolf were sourced independently from non-Goldman holdings, when Goldman knew that 36% of the securities were taken from Goldman's own inventory.

g. Goldman provided securitization services and warehouse accounts to lenders with a history of issuing high risk, poor quality loans, and knowingly included poor quality loans in Goldman-originated residential mortgage-based securities ("RMBS") and CDO securities.

h. From late 2006 through most of 2007, Goldman engaged in a relentless effort to sell the CDO and RMBS securities it underwrote, without disclosing to the clients it solicited that Goldman was simultaneously shorting the subprime market and betting it would lose value.

8. Within a few months of issuance, Timberwolf and Point Pleasant had lost virtually all of their value. Both offerings were later liquidated. The Goldman trader responsible for managing Timberwolf later characterized its issuance as "a day that will live in infamy."

The Parties

9. Plaintiff BYAFM is an exempted company incorporated with limited liability under the laws of the Cayman Islands. At all material times, BYAFM was the Master Fund into which the Basis Yield Alpha Fund, a regulated Cayman Islands Mutual Fund, invested. BYAFM invested in corporate and structured credit securities. At all material times, BYAFM was managed by Basis Capital Funds Management Limited ("BCFM") as its investment advisor. BCFM is headquartered in Sydney, Australia.

10. Defendant Goldman Sachs Group, Inc. ("GSG"), is a corporation organized and existing under the laws of Delaware, with its principal executive office located in the County of New York.

11. Defendant Goldman Sachs & Co. ("GSC") is a limited partnership registered as a United States broker-dealer. Its principal executive office is located in the County of New York.

12. Defendant Goldman Sachs International ("GSI") is a company with offices in London and the County of New York. GSI operates in the United States in conjunction with GSC and GSG.

13. Defendant Goldman Sachs & Partners Australia Pty Limited (formerly Goldman Sachs JBWere Pty Ltd) ("GSJBW") is a corporation organized and existing under the laws of Australia with, *inter alia*, offices in Melbourne, Sydney, and New York. It describes itself as being part of the Goldman Sachs worldwide network. GSJBW was formed in 2003 as the corporate vehicle by which GSG operated a joint venture in Australia with JBWere, a leading Australian investment bank and broker-dealer.

14. Each of the Goldman entities is engaged in global investment banking, securities and investment management, including providing services to investment funds such as BYAFM. At all material times, the Goldman entities held themselves out as entities that operated in accordance with ethical principles, including the principles that their clients' interests always come first and that integrity and honesty are at the heart of their business.

15. In the transactions at issue in this complaint GSG, GSC, GSI, and GSJBW agreed to and did act in a collective and coordinated manner to seek out clients like BYAFM and sell interests in Point Pleasant to BYAFM and enter into CDS contracts that referenced Timberwolf with BYAFM through the use of false and misleading representations and culpable omissions. Their activities were coordinated through New York by senior management of GSG and GSC. Through their scheme, GSG, GSC, GSI, and GSJBW intended to and did secure BYAFM's multi-million dollar investment in Point Pleasant and induced BYAFM to sell protection on

Timberwolf through two CDS contracts. The goal of their concerted effort was to off-load losses from a collapsing market in these securities to BYAFM.

16. GSJBW and GSI expected or reasonably should have expected that their acts would have consequences and effects in the County of New York.

17. In all matters relating to the transactions with BYAFM that are at issue in this complaint, the various Goldman entities were all acting in concert and in an integrated fashion under common direction from GSG and GSC and for a common purpose. In the alternative, GSI and GSJBW were acting as agents of GSG and/or GSC in respect of these transactions. The Goldman entities are referred to collectively herein as "Goldman" except where necessary to specify the particular entity.

Jurisdiction and Venue

18. This Court has jurisdiction over GSG, GSC, GSI, and GSJBW under CPLR 301 and/or 302 and/or BCL 1314(b).

19. Venue is proper under CPLR 503(c) and (d) because the principal office of both GSG and GSC is located in the County of New York; GSI and GSJBW also maintain offices in the County of New York. Additionally, venue is proper because many of the wrongful acts alleged herein occurred in the County of New York.

Overview of Allegations

20. This suit for common law fraud, breach of contract, and other counts arises out of three transactions. In the first, on or about April 17, 2007, BYAFM agreed to buy from Goldman certain BBB rated Point Pleasant securities at a price of approximately $12,258,000. In the second and third, on or about June 13, 2007, BYAFM agreed to enter into two credit default swaps with Goldman that referenced certain AAA rated Timberwolf securities priced at

approximately $42,165,000 and certain AA rated Timberwolf securities priced at approximately $38,655,000 for a total of $80,820,000. Goldman knowingly or recklessly misrepresented the value, quality, and market for these securities in order to induce BYAFM to purchase these securities (with respect to Point Pleasant) or sell protection on these securities (with respect to Timberwolf) at values Goldman knew were grossly inflated in order both to take them off Goldman's books and to provide Goldman with the opportunity to bet against their future performance.

21. The market for securities based on subprime residential mortgages as it existed during the timeframe relevant to this dispute was highly complex, opaque, and concentrated. Only a few investment banks were significant issuers or traders in this market, which was characterized by illiquidity and a paucity of publicly available information. Goldman was a central participant in this market and was intimately involved in all phases of it, including working closely with banks and other lenders who made high-risk mortgage loans in the first instance, working with syndicators in bundling mortgages into RMBS, creating and marketing both cash and synthetic CDOs, providing information to rating agencies to secure ratings on the securities it was offering and monitoring the performance of the securities and their constituent underlying securities post-issuance. As a consequence, Goldman was one of a very small group of market participants to have and acquire information about the current value and outlook for RMBS and CDO offerings.

22. Goldman and the other investment banks exercised substantial control over the flow of information, including pricing information, about these RMBS and CDO securities. As a result, the investors in the RMBS and CDO securities relied heavily on and reasonably expected the investment banks, such as Goldman, to provide truthful and complete information about the

RMBS and CDO securities and the pricing and market for these securities. The investment banks, including Goldman, encouraged this expectation. For example, on its web site, Goldman promised that it put its clients' interests first, and promised to act with integrity and honesty. Goldman was a member of FINRA, an industry regulatory organization that required members to conduct their business by observing high standards of commercial honor and just and equitable principles of trade. FINRA prohibited its members from inducing the purchase of any sale of securities, expressly including credit default swaps, by any manipulative, deceptive or other fraudulent device.

23. As the underwriter and sponsor of these securities, Goldman had far superior knowledge to BYAFM about the quality, value, pricing and likely performance over time of Point Pleasant and Timberwolf, as well as the criteria by which the underlying and reference securities on which these offerings were based were selected, information that was largely unavailable to BYAFM. As a consequence, BYAFM relied heavily on Goldman for truthful information and honest answers to its questions concerning this market generally and the Point Pleasant and Timberwolf offerings specifically.

24. Goldman was aware that BYAFM would of necessity rely on the information Goldman provided to it concerning Point Pleasant and Timberwolf, and Goldman expected and intended that BYAFM would rely on such information. Goldman knew that if it disclosed to BYAFM that the value of Timberwolf and its constituent securities was already dramatically impaired and its actual belief was that these offerings could not honestly be recommended – indeed, that it viewed Timberwolf as "one shitty deal" – BYAFM would not invest in them, but in order to offload these impaired securities, Goldman deliberately failed to disclose its detailed

appraisals and remarkably negative internal assessment of these offerings and instead made positive statements about their value that were knowingly false.

25. In an effort to encourage BYAFM to purchase interests in the Point Pleasant and Timberwolf offerings, Goldman knowingly and with intent to deceive made numerous statements to BYAFM that were false, incomplete, and misleading and/or made other such statements with reckless disregard as to whether or not they were false, incomplete, or misleading. Goldman further failed to disclose to BYAFM material information knowing that, by such omissions, information that Goldman did disclose was rendered misleading, and/or it acted with reckless disregard as to whether other such omissions of information rendered its disclosures misleading.

26. BYAFM reasonably and justifiably relied upon Goldman's misrepresentations and culpable omissions in connection with these offerings to its detriment and damage.

27. Goldman's many fraudulent misrepresentations and failures to disclose concealed the circumstances and factors that led to the dramatic decline in the value of Timberwolf and Point Pleasant and to BYAFM's loss.

Goldman's Undisclosed Assessment of the RMBS/CDO Market

28. In late 2006 to early 2007, Goldman, at the highest levels of the organization and based on its position as a preeminent entity that underwrites and makes markets in RMBS and CDOs and trades them itself, predicted that securities in this market would drop dramatically in value during the course of 2007. This internal and undisclosed assessment then motivated Goldman's actions with respect to such securities.

29. Goldman began shorting the market for such securities, so it could profit from their anticipated downturn. Goldman also purchased put options on the stock of companies that

were exposed to the decline in value of such securities. Goldman also became an aggressive seller of such securities, moving them off of its books by direct sales, by assembling CDOs based on such securities and selling them to its clients, and by taking undisclosed short positions, often against its own clients.

30. On December 15, 2006, David Viniar, Goldman's Chief Financial Officer, urged Tom Montag, the head of Sales and Trading at Goldman, to "be aggressive" in marketing subprime risk "because there will be very good opportunities as the markets go into what is likely to be even greater distress and we want to be in position to take advantage of them."

31. On February 1, 2007, Daniel Sparks, the head of the Mortgage Department at Goldman, sent an internal Goldman e-mail predicting a future decline in the "subprime environment."

32. On February 21, 2007, in an internal Goldman e-mail, Sparks noted that Goldman was "net short" in the subprime market.

33. On March 2, 2007, in an internal Goldman e-mail, Patrick Walsh of Goldman stated "my understanding is that the [Goldman] desk is no longer buying subprime. (We are low balling on bids.)"

34. On March 8, 2007, in an internal Goldman e-mail, Sparks gave a lengthy statement of his views on residential mortgage-backed securities. He referred to the Timberwolf deal, which at that point had not yet been issued, as one of Goldman's "most risky" CDOs. He reconfirmed Goldman's anticipation of a "dramatic credit environment downturn" and reiterated that Goldman is "still net short." He closed by saying "[t]herefore, we are trying to close everything down, but stay on the short side. But it takes time as liquidity is tough. And we will likely do some other things like buying puts on companies with exposure to mortgages."

35. On March 16, 2007, in an internal Goldman e-mail, Sparks was advised to tell the Goldman board of directors that Goldman had "purchased $60mm notional of equity put options on subprime lenders." These put options would expire with no value unless the stock of the subprime lenders fell below the strike price prior to the expiration date of the option.

36. On May 11, 2007, in an internal Goldman e-mail, Goldman's Craig Broderick reported to his colleagues that "Sparks and the Mtg [Mortgage] group are in the process of considering making significant downward adjustments to the marks on their mortgage portfolios esp CDOs and CDO squared." Both Point Pleasant and Timberwolf were synthetic CDO squared deals. Broderick acknowledged that these "downward adjustments" would potentially have a big impact on clients of Goldman "due to the marks and associated margin calls on repos, derivatives, and other products." As a result, Goldman delayed making such adjustments so it could continue marketing securities to its clients at prices in excess of their true values.

37. Goldman recognized that "downward adjustments" would have a huge impact on Goldman's clients because Goldman frequently financed its clients' purchases of CDO securities. Its clients would put up a percentage of the value of the CDO, and Goldman would finance the remainder. As a result, if the CDOs declined in value, Goldman would require the clients to post additional cash margin. Alternatively, Goldman's clients could effectively invest in a CDO security by entering into a credit default swap contract with Goldman referencing that security. In that situation as well, the client would have to post more cash collateral if Goldman lowered the value of the CDO security.

38. Internally, Goldman recognized that it was doing enormous harm to it clients by marketing CDO securities at an inflated price, providing financing for the sale based on that price and then quickly marking down the security and issuing margin calls. Harvey Schwartz, a

senior Goldman executive, commented in a May 11 e-mail that "[D]on't think we can trade this with our clients andf [sic] then mark them down dramatically the next day...." Nevertheless, Goldman, at its highest levels, decided to do exactly that in order to increase its profits resulting from the drop in value of the CDO securities that it constructed and sold.

39. The PSI Report accurately summed up Goldman's actions in this regard as follows:

> Goldman's internal marks demonstrate that, at the time it sold its CDO securities, Goldman's senior management knew its sales force was selling CDO securities at inflated prices and that the CDO securities were also rapidly losing value. In addition, soon after selling the CDO securities, Goldman marked down their value, causing some customers to incur substantial losses within days or weeks of a purchase and undergo substantial margin and collateral calls that caused additional financial distress.

40. In September 2007, in a phone call to Goldman analysts and investors, David Viniar confirmed Goldman's actually-held assessment of such securities during this time period, acknowledging that "our risk bias in that market was to be short and that net short position was profitable."

41. In an October 4, 2007 letter to the SEC, Goldman reported that it determined whether to be net long or short in sub-prime securities "depending on our changing view of the market" and that "during most of 2007, we maintained a net short sub-prime position and therefore stood to benefit from declining prices in the mortgage market."

The Point Pleasant Transaction

42. One of the transactions through which Goldman implemented its strategy to exploit what it believed would be a deteriorating market in RMBS and CDOs was Point Pleasant. Point Pleasant was a CDO squared security consisting of a portfolio of CDO assets or reference obligations.

43. Goldman was the structuring underwriter and placement agent for Point Pleasant, and Dillon Read Capital Management LLC ("DRCM"), a wholly owned subsidiary of UBS AG, was its asset selection and liquidation agent.

44. Goldman was anxious to sell Point Pleasant and offload the RMBS and CDO assets from its own inventory that were included in Point Pleasant's collateral, since it anticipated that the value of Point Pleasant and its underlying collateral, like its other RMBS and CDO holdings, would drastically decline in value. Internally, when asked whether Point Pleasant was "dangerous," Daniel Sparks responded that Point Pleasant was one of the "deals to worry about." Goldman decided to rush Point Pleasant to completion.

45. GSJBW and GSC targeted BYAFM as a potential investor in Point Pleasant. At GSC's urging, between February and April 2007, George Maltezos of GSJBW repeatedly solicited BYAFM to convince it to purchase an interest in Point Pleasant.

46. Maltezos first contacted BYAFM on the same day that Sparks gave his negative internal assessment of Point Pleasant. In his e-mail to John Murphy and Stuart Fowler of BYAFM, Maltezos did not mention that Point Pleasant was "dangerous" or a "deal to worry about," but instead described Point Pleasant as "an attractive opportunity brewing in the background." Maltezos explained that Goldman would be working with DRCM as collateral manager and emphasized that "Dillon Reed, Goldman and one other [were] committed to all of the equity ($13mm in total)."

47. Two days later, Maltezos sent an e-mail to BYAFM attaching the Pitch Book for Point Pleasant. The Pitch Book again stressed that both Goldman and DRCM would "purchase a portion of the Income Notes [the equity] on the closing date." The commitment to purchase equity by an underwriter or collateral manager is important to investors in the higher rated

tranches, as it manifests a belief backed by cash that the CDO will be able to pay off on every tranche down to the bottom equity layer.

48. Goldman recommended Point Pleasant to BYAFM as being an investment that was suitable for that portion of BYAFM's fund that was allocated to "bond/liquidity" type of investments, meaning assets that are more liquid than the "equity" portion of the portfolio. Internally, Goldman considered Point Pleasant to be the exact opposite of an investment suitable for the "bond/liquidity" portion of a portfolio. In fact, Goldman viewed Point Pleasant as a high-risk CDO that was likely to fail.

49. On April 13, 2007, Maltezos again contacted BYAFM about the Point Pleasant securities. When Murphy expressed concern about the potential returns on the investment, Maltezos assured him that Point Pleasant's cash flows were "rock solid."

50. While touting the quality of the investment to BYAFM, Goldman knew that Point Pleasant was a bad investment generally and specifically for BYAFM to undertake. An internal presentation to Goldman senior executives in May 2007 about valuation of Goldman's CDO assets stated: "[T]he desk is most concerned about the CDO^2 [CDO squared] positions, comprised of the recent Timberwolf and Point Pleasant transactions." While the final version of this presentation described these offerings as "extremely difficult to value," two earlier drafts of the presentation admitted that "the complexity of the CDO^2 [CDO squared] product and the poor demand for CDOs in general has made this risk [Point Pleasant and Timberwolf] difficult to sell and the desk expects it to underperform." Goldman was concerned about being stuck with unsalable securities and redoubled its efforts to use high pressure sales tactics to sell these securities.

51. At Goldman's urging, on April 17, 2007, BYAFM purchased $15 million BBB securities at a price of $81.72. The total purchase price was $12,258,000.

52. Goldman financed BYAFM's acquisition of the Point Pleasant securities by means of a Repurchase Facility. Under the terms of that Facility, if Goldman decreased its mark on the Point Pleasant securities, Goldman could require BYAFM to put up additional funds. This is referred to as making a margin call. Because Goldman was extending credit to BYAFM, Goldman had reviewed BYAFM's credit worthiness and the securities in its portfolio.

53. Goldman also knew at the time it sold Point Pleasant to BYAFM that the value of Point Pleasant was substantially below the purchase price and that a margin call was inevitable.

54. On April 27, 2007, only three days after BYAFM's purchase settled, Goldman made a margin call on BYAFM for $3.2 million. The majority of the call amount – $3.091 million – was attributable to the Point Pleasant securities that BYAFM had just purchased. This sudden and dramatic devaluation was of significant concern to BYAFM, not only as respected Point Pleasant but also because Goldman was then urging BYAFM to add a much larger investment in Timberwolf to its portfolio. Goldman quickly recognized that it needed to reassure BYAFM as to the value of these investments, and it did so as to Point Pleasant by first revising and then withdrawing the margin call it had sent.

55. When BYAFM first questioned this margin call, Goldman's initial response was to revise it. In an updated call sent later the same day, Goldman indicated that BYAFM instead owed only $720,000, approximately $600,000 attributable to Point Pleasant. The revised margin call nonetheless still reflected a drop in the purported value of BYAFM's Point Pleasant shares by $5 from BYAFM's purchase price, to a unit price of $76.72.

56. In response to BYAFM's further questioning about this revised margin call, Goldman denied any actual change in valuation. In an e-mail dated May 1, 2007, Maltezos assured: "I can confirm the Pt Pleasant BBBs were marked at the same level as you purchased it." Goldman later described the revised mark as an internal error. In an e-mail dated May 2, 2007, a Goldman employee explained: "I have spoken to our pricing team and they received the 76.72 price on the Point Pleasant through an internal feed which knocked out the correct price." Representing that there had been a further system error, Goldman revised the call on Point Pleasant to $35,000 only later to report that there was in fact "no call on Yield Alpha," thus reassuring BYAFM that Goldman continued to maintain Point Pleasant on its books at the same price that BYAFM purchased it.

57. BYAFM continued to seek correct information from Goldman about the value of the Point Pleasant BBB shares. On or about May 21, 2007, Sahil Sachdev of BYAFM sent an e-mail to Maltezos inquiring about Goldman's valuation of Point Pleasant. Maltezos assured BYAFM that there had been no decrease in value, writing: "For end April, these were marked at the same level [BYAFM] bought the bonds at, i.e. 81-23 (81.71875%)." On information and belief, Goldman's internal valuation was significantly lower and this representation was made to keep BYAFM as a prospective customer for Timberwolf.

58. On or about June 12, 2007, Goldman made another margin call on BYAFM, indicating a value for the Point Pleasant BBB securities of $75. When BYAFM asked Maltezos to justify the lower value, Maltezos again tried to placate BYAFM, stating: "I assure you no foul here." Maltezos explained, "You bought these bonds at 1200dm / 81.75 dollar price on April 19 and the 75 mark for end-May is the first adjustment we've made since you bought the bonds."

On information and belief, this representation was knowingly false as Goldman's internal mark was significantly lower and had been for some period of time.

59. On July 3, 2007, after closing with BYAFM on Timberwolf, Goldman sent BYAFM another margin call on Point Pleasant for $4.4 million. This represented a precipitous further drop in the valuation of these securities to a price of $50. On July 16, 2007, Goldman marked down the Point Pleasant BBB securities to a price of $10, and subsequently closed-out BYAFM's repurchase facility and took the Point Pleasant securities back onto its books at this $10 level, reducing the value of BYAFM's investment from $12,258,000 to $1,500,000. In total, BYAFM lost approximately $10,758,000 on Point Pleasant in less than three months.

The Timberwolf Transaction

60. In March 2007, Goldman, acting as structuring underwriter and placement agent, initial purchaser, and equity investor, and Greywolf Capital Management LP ("Greywolf"), acting as collateral manager and equity investor, began to market Timberwolf, a $1 billion single-A structured product CDO.

61. Goldman offered Timberwolf as a "defensively-managed cash flow positive" CDO consisting of a portfolio of single-A rated structured product CDO assets or reference obligations with a diversified pool of underlying RMBS collateral.

62. Goldman represented that the synthetic securities contained in the Timberwolf CDO would consist of single-name credit default swaps. These credit default swaps would name a tranche of a particular CDO as a reference obligation. Goldman represented that "[a]ll assets will be purchased from the market." Consistent with common practice, Goldman designated an affiliate, GSI, to act as the intermediary between Timberwolf and the broker-dealers who were the buyers of protection (either on their own behalf or on behalf of a customer) on the CDO

reference obligations that comprised the synthetic securities in Timberwolf. Thus, GSI, as an affiliate of Goldman, would, in the normal practice, have been the credit default swap counterparty to Timberwolf only in a nominal or intermediary capacity. In fact, Goldman, contrary to its specific representations, sourced 36% of the synthetic assets from its own books. Thus, Goldman held an undisclosed real (not nominal) 36% short position in Timberwolf.

63. Goldman knew that representing to potential investors that an experienced, third-party investment adviser had selected the assets of Timberwolf would aid Goldman's efforts to market Timberwolf. As a result, Goldman represented that Timberwolf's assets and reference securities were selected by an independent third-party collateral manager, Greywolf. In fact, Greywolf was not independent and Goldman exercised substantial influence and control over all the assets that Greywolf selected and retained the absolute right to reject any security suggested by Greywolf.

64. On March 27, 2007, in its role as exclusive underwriter and initial purchaser, GSC acquired Timberwolf from its issuer and urged its selling agents, including GSJBW, to aggressively offer for sale interests in Timberwolf's tranches. GSJBW immediately began to search for investors.

65. As part of its sales tactics, Goldman, through David Lehman, instructed Goldman personnel not to provide written information to potential investors about how Goldman was valuing or pricing the Timberwolf securities.

66. Earlier, on March 9, 2007, Harvey Schwartz, a senior executive at Goldman Sachs, expressed concern to Sparks and others about what Goldman sales personnel were telling clients about CDO securities: "Seems to me ... one of our biggest issues is how we communicate our views of the market – consistently with what the desk wants to execute." Sparks responded

by outlining several concerns and the need for the sales team and traders to work together. He wrote:

> "3 things to keep in mind:
>
> (1) The market is so volatile and dislocated that priorities and relative value situations change dramatically and constantly.
>
> (2) Liquidity is so light that discretion with information is very important to allow execution and avoid getting run over.
>
> (3) The team is working incredibly hard and is stretched."

Sparks concluded: "Priority 1 – sell our new issues and our cash positions."

67. Because Goldman felt increased urgency to offload the Timberwolf securities, on April 19, 2007, Sparks suggested special incentives to Goldman's sales personnel to sell the new offering. He proposed that Goldman should offer "some ginormous credits [sales commissions] – for example, let's double the current offering of credits for Timberwolf." The response to Sparks was that this had already been done for Timberwolf.

68. Immediately following the settlement of the Point Pleasant transaction in April 2007, there began a series of conversations and e-mail communications between Goldman and BYAFM concerning the possibility of BYAFM making a further investment in highly rated CDO securities. These communications were largely between George Maltezos of GSJBW, acting for Goldman, and John Murphy of BCFM, acting as investment advisor to BYAFM. Goldman had in mind the Timberwolf security.

69. On April 23, 2007, Maltezos emailed John Murphy to thank him for his "support" on the Point Pleasant transaction and enquired as to "how far up the cap structure you are willing to look in this 'levered' context?" Maltezos knew that BYAFM was predominantly a buyer of CDO equity and that it had never invested in the highly rated end of the CDO market. When Murphy expressed a potential interest and enquired whether Maltezos was talking about a further

investment in Point Pleasant, Maltezos replied "Was thinking outside the box generically, but deal sheet shows some AAA and AA paper available in a Greywolf managed "A" cdo-sqd deal, called Timberwolf." Later that day, Maltezos sent Murphy information about Timberwolf in order to induce BYAFM to make an investment in Timberwolf.

70. On April 24, 2007, Maltezos e-mailed Murphy and told him that he had spoken by telephone with Goldman's Peter Ostrem and Daniel Sparks in New York about the offering. Maltezos reported that Ostrem and Sparks described Timberwolf as "a block of cheap, highly-rated CDOs available on a leveraged basis" and that Sparks and Ostrem were "supportive to help structure something that should offer [BYAFM] an attractive risk-adjusted return on capital proposition."

71. Goldman provided Basis with a Pitchbook and Cashflow Analysis which represented that:

a. Timberwolf was structured to "generate positive performance for the benefit of both debt and equity investors." (Pitch Book)

b. Goldman would invest in 50% of the equity position in Timberwolf, thus representing that its interests were aligned with Basis's interests. (Pitch Book)

c. The objective of selecting assets and identifying reference securities was to "identify and exclude transactions that contain potentially adverse features, including: higher risk, lower quality." (Pitch Book)

d. Timberwolf was structured with "an emphasis on downside risk and an objective of zero loss for CDO debt investments." (Pitch Book)

e. Timberwolf's assets and reference securities were selected by Greywolf, who was experienced in making such selections and who acted independently from Goldman. (Pitch Book)

f. All of Timberwolf's assets and reference securities were sourced from the market, thus representing that their price was established by the market and that they were not from Goldman's own portfolio. (Pitch Book)

g. The Timberwolf bonds were independently rated by Moody's and S&P as investment grade, that is AAA and AA rated securities. (Pitch Book)

h. Goldman's cash flow estimates indicated that Timberwolf would return positive performance and represent a secure investment. (Cash Flow Analysis)

i. Greywolf would perform monthly reviews for changes in underlying portfolio composition and credit quality to ensure early detection of sub-performing credits in order to maintain cash flow performance and rating stability. (Pitch Book)

72. BYAFM was concerned about the pricing of these securities because of its then on-going communications with Goldman regarding Point Pleasant, when Goldman first made substantial margin calls and then, when queried, changed its position and stated that no additional margin was required but thereafter changing yet again and demanding margin. Unbeknown to BYAFM, Goldman's internal marks on Point Pleasant would have called for even larger margin calls, but Goldman was holding off on these margin calls in order to convince BYAFM to invest in Timberwolf. BYAFM would not have entered into the CDS that referenced Timberwolf if Goldman had disclosed the substantial downward adjustments on its Point Pleasant marks.

73. On June 12, 2007, Murphy advised Maltezos that BYAFM would not invest in Timberwolf until it had further information from Goldman regarding pricing and market conditions. Later that same day, Maltezos told Murphy that Daniel Sparks, head of the GSG mortgage department in New York, had told him that Goldman appreciated BYAFM's support for the business and had proposed that BCFM (on behalf of BYAFM) speak directly to the New York trading desk about the market generally and Timberwolf specifically. Maltezos explained to Stuart Fowler of BCFM that David Lehman would speak with BCFM "to clarify any and all questions you have on the marking policy of Goldman ... and the overall trading that has been

seen by the GS desk in the last 1-6 months." Maltezos then set up a conference call for June 13, 2007, to address these concerns and issues.

74. On the afternoon of June 13, 2007 in Australia, there was a conference call among David Lehman of GSC, Maltezos of GSJBW, and Stuart Fowler and Sahil Sachdev of BCFM. Fowler expressed concern about the previous sequence regarding margin calls and his concern that there were different marks on securities depending on the situation. He indicated concern that Point Pleasant had been purchased at an inflated price and that the margin calls were made on the basis of different lower marks. Fowler then asked Lehman whether the price Goldman was offering to BYAFM for the proposed Timberwolf investment was a good entry price. Lehman responded yes, that it was a good entry price and level. Lehman further stated that Goldman had seen active buying of CDOs like Timberwolf, and he was expecting price stability going forward. Lehman also represented to Fowler that Goldman only had one mark for its securities and that if Goldman had more of the Point Pleasant securities to trade at a lower price Goldman would have shown them to Fowler.

75. Based on these and other representations Goldman had made both orally and in writing, BYAFM agreed to the transaction Goldman was offering, entering into CDS that referenced: (i) AAA rated securities from Tranche A2 of Timberwolf at a price of $84.33 for a total of $42,165,000; and (ii) AA-rated securities from Tranche B of Timberwolf at a price of $77.31 for a total of $38,655,000, for a total commitment of $80,820,000.

76. Pursuant to the CDS terms, on or about June 18, 2007, BYAFM paid GSI in New York a down payment of $11,250,000.00. Since they were structured as CDS, the substance of the transactions was essentially equivalent to the balance of the purchase price being financed by credit extended by Goldman.

77. Pursuant to the CDS terms, GSI was entitled to reevaluate and reprice the Timberwolf reference obligations from time to time to reflect any movements in their fair market value. If such reevaluations and repricing disclosed a downward adjustment, GSI was entitled to issue notices to BYAFM to pay it the amount of the downward adjustment in value so as to increase the collateral held by Goldman for the amount of the credit extended to BYAFM.

78. On July 4, 2007, *only twelve days after* Goldman received from BYAFM the signed confirmations for these purchases, BYAFM received its first Timberwolf margin call, a notice requiring a $5,040,000 payment to GSI. BYAFM paid the requested amount. In an internal e-mail, Maltezos commented as follows: "Xmas came early this year." This comment sums up Goldman's view that what was a disaster for BYAFM was a bonanza for Goldman.

79. One week later, on July 11, 2007, BYAFM received a second margin call in the sum of $5,100,000.

80. One day later, on July 12, 2007, BYAFM received a third margin call in the sum of $8,190,000.

81. On July 16, 2007, BYAFM received a fourth margin call in the sum of $12,400,000.

82. On July 17, 2007, BYAFM received a fifth margin call in the sum of $5,100,000. Thus within less than a month of the purchase of the securities, their value, according to Goldman, had dropped more than $30 million.

83. Consistently throughout July 2007, BYAFM asked for, and Goldman refused to provide, data that would support Goldman's downward adjustments for the marks on Timberwolf and Point Pleasant.

84. BYAFM did not meet the margin calls of July 11, 12, 16 or 17, 2007, and GSI notified BYAFM that it was in default and designated July 24, 2007, as the Early Termination Date on the CDS.

85. BYAFM went into provisional liquidation in the Cayman Islands in August 2007 and into Official Liquidation in December 2007. Official Liquidators were appointed to adjudicate claims, determine the best approach for realizing value from BYAFM assets, and pursue remaining assets. In the summer 2008, as part of the Official Liquidation of BYAFM in the Cayman Islands, the Official Liquidators distributed the sum of approximately $40 million from the BYAFM estate to GSI to pay its asserted claims against BYAFM for margin principal and interest due under the CDS. Such payment by the Official Liquidators was specifically without prejudice to any claims that BYAFM might have against Goldman with respect to the securities.

86. In total, BYAFM lost approximately $56,290,000 on Timberwolf in less than six weeks.

Goldman's Fraudulent Representations and Omissions

87. In its capacity as underwriter and placing agent for Point Pleasant and Timberwolf, when it solicited BYAFM to invest in these offerings, Goldman had an affirmative duty to disclose material information within its possession bearing on the current value and likely future value of the securities it was offering for sale that a reasonable investor would want to know.

88. Under Goldman's own sales policies and procedures, an affirmative action by Goldman personnel to sell a specific investment to a customer constitutes a Goldman recommendation of that investment. Goldman's published policy is "Our clients' interests

always come first." Its recommendations of Point Pleasant and Timberwolf to BYAFM constituted representations that these investments were suitable for BYAFM and in BYAFM's best interests.

89. Quite apart from its affirmative duty as underwriter and placing agent actively soliciting its client BYAFM to invest in these offerings, Goldman had the duty of any seller of securities not to provide knowingly false, incomplete, or misleading information to BYAFM in connection with the sale of interests in Point Pleasant and Timberwolf and not to fail to disclose information knowing that its omission rendered the information Goldman had provided to BYAFM misleading.

90. In breach of these duties, Goldman's written and oral representations to BYAFM alleged in ¶¶ 45-49, 54-58, 61-63 and 69-74 above were materially false and misleading and/or were rendered false and misleading by Goldman's failure to disclose material information necessary to make the representations not false and/or misleading, as shown in ¶¶ 91-175 below.

A. Misrepresentations as to Goldman's Non-Disclosed Assessment of the RMBS/CDO Market and Shorting that Market

91. Contrary to its recommendations of Point Pleasant and Timberwolf to BYAFM and its representations, both express and implied, that these investments were suitable, of high quality and in BYAFM's best interests, Goldman actually believed the exact opposite; that these investments were on the verge of collapse and were *not* in BYAFM's best interests but would only benefit Goldman. This belief was based on Goldman's far superior knowledge of the market for AAA and AA tranches of CDOs, the quality and characteristics of subprime RMBS and CDOs as well as its specific knowledge of these CDOs which it underwrote and marketed. Goldman's belief was reflected in its internal assessment of that market and knowledge about the impaired nature of these assets in late 2006 and early 2007, as alleged in ¶¶ 28-41 above.

92. At no time during its dealings with BYAFM did Goldman reveal to BYAFM its internal assessment or its knowledge that Timberwolf and Point Pleasant were designed and expected to fail, and had already declined in value significantly below the price at which Goldman offered them to BYAFM. Nor did Goldman disclose its firm belief that these securities were likely to decline significantly going forward.

93. Goldman not only held this belief, but unbeknown to BYAFM, it was aggressively taking action on it. Thus, as alleged in ¶ 29 above, Goldman was engaged in significant and large transactions in order to short the subprime market. Goldman's shorting strategy reflected Goldman's true belief that the market for RMBS/CDO securities was unstable and that prices for such securities would significantly decline.

94. Goldman was aggressively selling Timberwolf, Point Pleasant, and similar offerings because Goldman knew that securities based on subprime mortgages, including the very securities that were included in Point Pleasant and Timberwolf, were dropping in value and believed that they would dramatically drop further in value. Goldman needed to offload these toxic securities to shift the certain losses onto its clients.

95. At the very time Goldman was pressing BYAFM to enter into CDS referencing Timberwolf, its Structured Product Group ("SPG") trading desk, the same desk that would execute the Timberwolf trades with BYAFM, was short $2.8 billion in CDO risk.

96. The Goldman personnel who dealt with BYAFM on these transactions, including Daniel Sparks, Peter Ostrem, David Lehman, and George Maltezos, were well aware of Goldman's internal assessment and shorting strategy and of its belief that this market and these securities in particular were destined to fail. They thus had no good faith belief that Point Pleasant and Timberwolf were in BYAFM's best interests, but they knowingly and intentionally

withheld this information from BYAFM in order to induce BYAFM to purchase the securities they were offering.

B. Misrepresentations as to Goldman's Valuation of Timberwolf and Point Pleasant

97. Goldman began to market and sell the Point Pleasant and Timberwolf securities in the first quarter of 2007.

98. Very quickly, Goldman executives became concerned that Goldman was not able to sell Timberwolf and Point Pleasant and that the value of these unsold securities, which were held on Goldman's books, was rapidly declining.

99. As a result of this concern, Goldman's management, with the knowledge of its senior executives, launched two related initiatives. The first initiative was to engage in a comprehensive CDO valuation project that would marshal Goldman's extensive internal resources, including the knowledge of its various trading desks, and other assets of the firm, to reappraise the value of its CDO assets, including prominently Timberwolf and Point Pleasant. The second initiative was to target specific overseas funds, including BYAFM, to invest in Point Pleasant and Timberwolf. Goldman intentionally did not advise these funds, including BYAFM, about the valuation project or the results of that project. Instead, Goldman decided to mark down the value of Timberwolf and Point Pleasant internally and to market Timberwolf and Point Pleasant to BYAFM and other funds at much higher levels than the values arrived at by the CDO valuation project.

100. A May 11, 2007 e-mail by Daniel Sparks reflects the concern that the value of Goldman's remaining CDO assets, which included Timberwolf and Point Pleasant, was rapidly declining. Mr. Sparks warned one senior executive: "We are going to have a very large mark down – multiple hundreds. Not good." Unless Goldman could sell these impaired assets at a

pre-mark down price to its clients, Goldman would experience a multi-hundred million dollar loss.

101. Sparks also noted that "cdo positions and market liquidity and transparency have seized. I posted senior guys that I felt there is a real issue. I'm going to make a change in the responsibility of the business away from Ostrem to David Lehman...."

102. At this time, Goldman decided to stop issuing new CDOs, and the head of its CDO Origination desk, Peter Ostrem, left the firm. As he said he was going to do, Sparks named as his replacement David Lehman, who was a senior member of the SPG and head of its Commercial Mortgage Backed Securities ("CMBS") Trading Desk. As noted below, Lehman made knowingly false and misleading representations in order to induce BYAFM to enter into CDS that referenced Timberwolf.

103. On May 11, 2007, Goldman senior executives, including Gary Cohn, Chief Operating Officer and Co-President, and David Viniar, Chief Financial Officer, held a lengthy meeting with Mortgage Department personnel, their risk controllers, and others to develop a "Gameplan" for the CDO valuation project. The Gameplan called for the Mortgage Department to use three different valuation methods to price all of its remaining CDO warehouse assets and unsold securities from the Goldman-originated CDOs, which included Timberwolf and Point Pleasant, then being marketed to clients.

104. On May 14 (a month before the BYAFM Timberwolf transaction), Sparks provided an update to Tom Montag, co-head of Global Securities at Goldman, on the valuation project. He indicated he was in a "large meeting" and that "[i]n base case, Timberwolf aaa's at 65." When asked by Montag what he thought about this, Sparks responded "I think we should take the write-down, but market at much higher levels."

105. The valuation project's results were summarized in a presentation on Sunday, May 20, 2007, in a late evening conference call in which Viniar, Sparks, Lehman, and others participated. Sparks had reviewed and commented on a draft of the presentation (the "Draft Presentation") in advance.

106. The Draft Presentation identified write-downs for CDO squared positions in the range of 111 to 221 million, and stated that these write-downs "are driven by Mezz AAA and AA tranches of Timberwolf and Point Pleasant CDO^2 [CDO squared] structures...."

107. In the Draft Presentation reviewed by Sparks, the Mortgage Department stated that it expected Goldman's CDO squared deals, Timberwolf and Point Pleasant, "to underperform":

> The complexity of the CDO^2 [CDO squared] product and the poor demand for CDOs in general has made this risk difficult to sell and the desk expects it to underperform.

108. Sparks reviewed that draft language and made comments about other items on the same page, but did not change the statement that, "the desk expects it to underperform."

109. The Final Presentation notes that the trading desk "is most concerned about the CDO^2 [CDO squared] positions, comprised of the recent Timberwolf and Point Pleasant transactions."

110. The Final Presentation recommended that sale of the Goldman-originated CDO securities, including Timberwolf and Point Pleasant, be targeted to four investment funds, including BYAFM.

111. The very same page of the Final Presentation that addresses targeting BYAFM states that a Goldman manager, Elisha Wiesel, is "working with legal on viability of disseminating information to investors." Goldman did not disclose any information about this

valuation project to BYAFM, even though on June 13, as alleged at ¶ 74, Stuart Fowler asked Lehman a direct question about Goldman's pricing of Timberwolf and Point Pleasant.

112. The Final Presentation, which was submitted to Mr. Viniar on May 20, notes that David Lehman of SPG Trading is a member of one of the three teams tasked to value the positions held by Goldman, which would include the unsold portions of Timberwolf and Point Pleasant.

113. As a result of its internal CDO valuation project, as of late May, well before BYAFM agreed to the credit default swap that referenced the Timberwolf A2 tranche bonds at $84.33, Goldman had valued these bonds at significantly lower levels. On May 13, 2007, Paul Burchard, one of the Goldman valuers, reported to Sparks, Lehman, and other Goldman managers responsible for the valuation project that a small sample of Timberwolf's underlying RMBS/CDO on which Goldman had "complete underlier marks" showed that their true risks had not been fully reflected in how Goldman had valued Timberwolf and, if the trend was extrapolated, the price of the A2 tranche would be $35 to $41.

114. A subsequent internal Goldman analysis of prices for Timberwolf was conducted in preparation for the May 20 management meeting. This analysis showed two sets of prices for the Timberwolf tranches that were ultimately purchased by BYAFM, one set based on the CDO marks, the other on RMBS marks. The prices developed through this analysis were:

	Price based on CDO Marks	**Price based on RMBS Marks**
Timberwolf AAA	66	24
Timberwolf AA	38	15

115. The CDO valuation project took into account extensive information unknown to BYAFM but known to Goldman.

116. The CDO valuation project and its results refute David Lehman's June 13 representation that Goldman had only "one mark" for its securities.

117. As a result of the internal CDO valuation project, Goldman valued the Point Pleasant bonds that BYAFM purchased at $50. BYAFM paid $81.72 for those bonds on April 17, 2007. Despite its internal $50 valuation, as late as mid-May 2007, Goldman insisted to BYAFM that its internal mark showed no deterioration in the value of the Point Pleasant bonds and as late as mid-June, Goldman told BYAFM that it had only revised this mark to $75. Goldman's representations to BYAFM concerning its internal marks on the Point Pleasant bonds sold to BYAFM were knowingly false and misleading.

118. The CDO valuation project provided clear notice to Goldman senior management at the highest levels that its CDO assets, including prominently Timberwolf and Point Pleasant, had fallen sharply in value, and that despite their lower value, the Mortgage Department planned to aggressively market them to clients of Goldman, including specifically BYAFM. In marketing Point Pleasant and Timberwolf to BYAFM, Goldman knowingly and intentionally withheld material information about the pricing of Point Pleasant and Timberwolf and about the actual and anticipated further drop in value of Point Pleasant and Timberwolf securities. In addition, Goldman knowingly made false and misleading statements about the pricing of Point Pleasant and Timberwolf.

C. Misrepresentations as to Alignment of Goldman's and BYAFM's Interests

119. In recommending Point Pleasant and Timberwolf to BYAFM, Goldman misrepresented that Goldman's and BYAFM's interests were aligned, so that BYAFM could take comfort in the fact that Goldman would profit from the transactions only if BYAFM

profited. Thus in both transactions Goldman represented that it held a substantial interest in the equity tranches of the two deals.

120. CDO deals were typically structured so the equity tranche would be credited with payments of mortgage interest and repayments of mortgage principal only if the debt tranches, all of which were superior to equity, were paid first. Hence, Goldman's represented willingness to invest its own funds in the equity tranches was intended to and did signal to investors like BYAFM Goldman's confidence in the performance of the debt securities it was offering.

121. While initially Goldman did invest in the equity tranche of Timberwolf, by the time it reached its deal with BYAFM, Goldman had sold its equity interest in Timberwolf and failed to correct or modify its earlier representation. Thus, at the time of the transaction Goldman had no interest in the Timberwolf security, contrary to the representation made to BYAFM.

122. In the Timberwolf transaction, not only were Goldman's interests not aligned with BYAFM's by virtue of Goldman investing in equity, Goldman's interests were diametrically opposite from BYAFM's interests. Unbeknown to BYAFM, Goldman actually retained a large interest in the short side of Timberwolf.

123. On Point Pleasant, Goldman had taken short positions on CDOs that were assets of Point Pleasant. This meant that Goldman would profit if these CDOs that were assets of Point Pleasant went down in value.

124. Internally at Goldman, Goldman viewed the structuring and marketing of CDOs as an "enormous opportunity" to "efficiently" go short the subprime mortgage market. Goldman could transfer subprime-related securities from its own portfolio – including RMBS and notes in CDOs collateralized by RMBS – to Point Pleasant and Timberwolf as underlying collateral for

those transactions and could do so at prices Goldman knew were in excess of their true value, as reflected in the mark-downs of these assets that Goldman had already taken or planned to take on its own books. Goldman also could buy relatively inexpensive credit protection against the decline in value it anticipated would occur on synthetic CDOs included in these offerings by acting as the synthetic CDOs' swap counterparty (as it did with Timberwolf). CDOs such as Timberwolf whose collateral consists of both cash and synthetic assets thus presented a dual opportunity, because Goldman could both dump poor performing cash RMBS/CDOs and take short positions on credit default swaps that referenced CDOs.

125. Goldman did not disclose to BYAFM that it intended to be and remain massively short on Timberwolf's portfolio, and that Goldman therefore stood to reap huge profits on Timberwolf. Furthermore, based on the May 2007 internal valuation process, Goldman knew that, in fact, the Timberwolf reference obligations had already significantly declined in value before BYAFM invested in Timberwolf, and Goldman believed, based on its position in the market and exclusive access to non-public information, that the decline in value would continue. Neither did Goldman disclose that it had shorted CDOs that were included within the Point Pleasant portfolio.

D. Misrepresentations as to Asset Selection Process

126. In October 2006 and December 2006, Goldman tried to interest BYAFM in two synthetic CDOs where Goldman was the Liquidation, Structuring and Placement Agent to the deal. On both occasions, BYAFM informed Goldman that it would not invest in this type of CDO which it referred to as a "[trading] desk deal" because of the lack of an independent CDO manager. Goldman and Maltezos knew from their extensive knowledge of BCFM and the Funds managed by it that it was BYAFM's policy to invest in CDOs with independent managers so as

to avoid the risk of buying into deals that were merely a vehicle for banks to offload balance sheet risk. In order to overcome BYAFM's concern, Goldman misrepresented how the Timberwolf assets were selected and disguised the fact that Goldman had deliberately chosen a CDO manager that would act on Goldman's instructions or recommendations so that the deal would essentially be "desk driven", but have the appearance of being independently managed.

127. Contrary to Goldman's representations that it used independent entities to select the underlying assets and reference securities for these transactions, Goldman failed to disclose to BYAFM that Goldman actually did not allow Greywolf to act independently and had deliberately chosen Greywolf because of Goldman's ability to manipulate it. This was not new conduct on the part of Goldman. In December 2006, in discussing the appointment of a manager for a similar CDO security, Abacus ACA, Fabrice Tourre of Goldman suggested Goldman needed a manager that "will be flexible w.r.t. [with respect to] portfolio selection (*i.e.* ideally we will send them a list of 200 Baa2 rated 2006 vintage RMBS bonds that fit certain criteria, and the portfolio selection agent will select 100 out of the 200 bonds)." Unbeknown to BYAFM, Goldman knew that Greywolf was similarly a captive manager and that Goldman exercised substantial influence and control over all assets that Greywolf selected and retained the absolute right to reject any security suggested by Greywolf.

128. Contrary to Goldman's representations that these asset selectors would select assets that would generate positive performance and avoid assets that were higher risk and poorer quality, Goldman used its influence and control over Greywolf in order to include assets from its own inventory that it believed were already impaired in value and would continue to perform poorly. Goldman had represented that all assets would be sourced from third parties in the market in order to lead BYAFM to believe that Goldman was not using Timberwolf to offload

impaired assets from its own inventory. In the early planning stages, Goldman proposed to structure the Timberwolf portfolio with 50% comprised of CDOs and 50% of collateralized corporate loan obligations ("CLOs"). Goldman later determined, however, to exclude the higher performing CLOs from Timberwolf, reserving them for sale separately, and to limit Timberwolf's assets to CDOs that Goldman believed were of poorer quality. Goldman took these steps because it intended to take substantial short positions in Timberwolf and would profit if it failed.

129. Ultimately, Goldman was the single largest source of assets to Timberwolf. 36% of Timberwolf came from Goldman's own holdings, contrary to its representations that all assets would be sourced in the market. As a result, far from having interests aligned with Timberwolf investors, Goldman held an undisclosed 36% short interest in Timberwolf contrary to the representations made to investors.

E. Misrepresentations as to True Value of Securities

130. Goldman not only misrepresented its views as to the likely direction of the future market for the Point Pleasant and Timberwolf securities it was selling, but it knowingly misrepresented their true current value.

(1) Clayton's Due Diligence Findings

131. Because of its method of selecting the underlying assets and reference securities, as alleged in ¶¶ 126-129 above, Goldman knew that the resulting Point Pleasant and Timberwolf securities were of much lower quality and value than represented. Goldman knew this because of its own due diligence investigations and the due diligence investigations, performed for Goldman's benefit but not for disclosure to customers Goldman was soliciting, by outside firms like Clayton Holdings, Inc. ("Clayton").

132. In addition to arranging CDOs, Goldman was also directly involved in acquiring or originating mortgage loans and then assembling, creating, and marketing RMBS that were backed by pools of these loans.

133. As a direct result of this role, Goldman acquired a great deal of non-public detailed information about the quality or lack thereof of the mortgages that backed the RMBS. This information was highly material to assessing whether the RMBS would either perform as expected, or instead would fail to meet expectations and even go into default. Equally, this information was highly material as to the expected performance and risk of CDOs constructed out of these RMBS.

134. GS Mortgage Securities Corp. ("GS Mortgage") is a Goldman affiliate that was involved in the RMBS securitization process. GS Mortgage is a wholly-owned subsidiary of GSG and an affiliate of GSC, GSI, and GSJBW.

135. GS Mortgage is a special purpose entity formed for the purpose of purchasing mortgage loans, filing registration statements with the SEC, forming RMBS trusts, and carrying out related functions.

136. In addition to heading Goldman's Mortgage Department, Daniel Sparks was also Chief Executive Officer, Vice President, and a Director of GS Mortgage. Sparks was directly involved in Goldman's marketing of Timberwolf and Point Pleasant and in particular in Goldman's targeted marketing of these securities to BYAFM.

137. Acting for GS Mortgage, Sparks signed various SEC Registration Statements pertaining to specific RMBS assembled and arranged by Goldman.

138. Goldman, either directly or through a third-party due diligence firm, routinely conducted due diligence review of the mortgage loan pools it bought from lenders or third

party brokers for use in its RMBS securitizations. Thus, Goldman, including Sparks, had access to detailed non-public information concerning the true quality of the loans collateralizing the RMBS securitizations it sponsored.

139. Goldman retained third-party due diligence providers such as Clayton to analyze the loans it was considering placing in its securitizations. Throughout 2006, Goldman was Clayton's largest client. For each quarter of 2006, and for the full year, Clayton reviewed more loans for Goldman than for any other investment bank.

140. Clayton told the New York Attorney General "that starting in 2005, it saw a significant deterioration of lending standards and a parallel jump in lending expectations." As a key client of Clayton, Goldman had access to non-public reports and data by Clayton showing this significant deterioration.

141. Clayton's reports to Goldman were confidential, and were not shared with purchasers of RMBS or CDOs underwritten and sold by Goldman. Nor were the reports shared with BYAFM.

142. Documents released by Clayton confirm that Goldman was aware of the weakness in the loan pool and in the underwriting standards of the originators it used in its RMBS transactions. For example, according to an internal Clayton "Trending Report" made public by the Government in conjunction with testimony given in September 2010, Goldman Sachs was informed that 23% of the loans Clayton reviewed for Goldman "failed to meet guidelines." These loans were not subject to any proper "exception," as they did not have any "compensating factors." Rather, these loans were plainly defective. Sparks, by virtue of his position at GS Mortgage, was aware of the information contained in these Clayton reports.

143. As a result of information contained in Clayton's "Trending Report" and other such information available to Goldman, Goldman *knew* it was securitizing defective loans into RMBS. Goldman was made fully aware on a regular basis that a significant percentage of its loans failed to meet stated underwriting guidelines, but were being included anyway in the pools underlying the securities that Goldman constructed, marketed and sold to investors and that became constituent parts of CDOs.

144. Sparks, as both head of Goldman's Mortgage Department and also the CEO of GS Mortgage, had extensive knowledge of these serious defects in the underlying mortgages that were included in RMBS that Goldman constructed, marketed and sold.

145. A significant number of the RMBS that were included in the CDOs that were component parts of Timberwolf were constructed, marketed, and/or sold by Goldman affiliates. As a result, Goldman, including Sparks, had specific and detailed non-public information about the impaired quality of the individual mortgages that were pooled together into these RMBS, which in turn were included in CDOs that make up Timberwolf.

146. As a result of Goldman's special, unique and non-disclosed knowledge gleaned from Clayton's reports and other sources, Goldman, including Sparks, knew that the rate of defaults in the underlying mortgages that ultimately flowed through to Point Pleasant and Timberwolf would be much higher than anticipated. More fundamentally, Goldman had in its possession specific and detailed information showing that Point Pleasant and Timberwolf were constructed out of financial assets that were fundamentally impaired and debased. Goldman did not disclose this information to BYAFM.

(2) Contemporaneous Transactions in CDO Securities

147. Unknown to BYAFM, prior to the June 13 call with Lehman, Goldman had been engaged in negotiations with Bear Stearns Asset Management ("BSAM") on behalf of the Bear Stearns High-Grade Structured Credit Strategies Enhanced Leverage Fund ("the BSAM Fund") and one other BSAM fund. BSAM wished to liquidate a high value portfolio of CDO securities, including $300 million of AAA rated Timberwolf securities from the most senior levels of Timberwolf it had earlier purchased from Goldman.

148. Goldman had extended $453 million in credit to the BSAM Fund. This credit was backed by CDO securities held by the BSAM Fund, including the $300 million of AAA rated Timberwolf securities.

149. In early June 2007, Goldman and several other banks marked down BSAM owned securities resulting in substantial margin calls to BSAM. With respect to these mark-downs, Michael Swenson of Goldman, in a June 7 email to David Lehman, said "[w]e need to mark him [BSAM] he is the biggest elephant by far and it has an impact on the m$arket [sic]."

150. BSAM provided Goldman with a list of CDO assets it held to determine if Goldman was interested in buying or repurchasing these assets. Gerald Ouderkirk of Goldman reviewed this material, and noted in an internal Goldman email: "[i]n total these two portfolios add up to roughly 17 bil in total exposure after leverage. It goes without saying that if this portfolio were to be released into the market the implications would be pretty severe."

151. On June 7, June 8 and June 11, Goldman made margin calls totaling in excess of $20 million on the BSAM Fund.

152. In this time period, BSAM met with its lenders, including Goldman, to explain that BSAM lacked cash to meet margin calls. BSAM tried unsuccessfully to negotiate a 60-day reprieve.

153. On June 12, Goldman learned that on the previous day the two BSAM funds had failed to pay a number of outstanding trades, which Goldman saw as "quite unusual." Goldman also knew by June 12 that the margin calls made on the BSAM Fund exceeded its cash reserves and that the BSAM Fund intended to raise additional cash by liquidating substantial CDO assets.

154. Goldman's managers and traders considered these circumstances to be a watershed market event. Joshua Birnbaum, who headed ABX trading on Goldman's SPG desk, which was the desk David Lehman co-managed, put it as follows: "[T]he Bear Stearns Asset Management (BSAM) situation changed everything. I felt that this mark-to-market event for CDO risk would begin a further unraveling in mortgage credit. Again, when the prevailing opinion in the department was to remain close to home, I pushed everyone on the [SPG] desk to sell risk aggressively and quickly. We sold billions of index and single name risk."

155. David Lehman knew all of this regarding BSAM and that, if BSAM defaulted and the Timberwolf securities flooded the market, Goldman would never be able to sell Timberwolf securities and it would be stuck with the losses. Nevertheless, despite his undertaking to discuss with BYAFM the overall trading by Goldman in such securities and related activity in the market over the previous six months, as alleged in ¶ 73 above, and despite his knowledge that the BSAM asset liquidation was likely to destabilize the CDO market, Lehman represented to BYAFM that he saw stability in the market going forward.

156. Goldman knew that the flood of RMBS/CDO holdings that BSAM was about to create would likely result in a significant overhang of supply that would further depress prices

for such securities, lead to margin call activity across the CDO market and a likely significant reduction in market liquidity. Lehman's knowledge of the BSAM situation made his statement to BYAFM that he expected price stability on a going-forward basis, as alleged in ¶¶ 74-155 above, knowingly false and misleading.

157. BSAM had purchased from Goldman several other CDO securities in addition to Timberwolf, including a Goldman CDO known as Abacus 2006 –HGSI ("Abacus 06").

158. Goldman's trading desks considered that a tranche of Abacus 06 was comparable to a tranche of Timberwolf purchased by BYAFM.

159. By the end of April 2007, Goldman had marked this tranche of the Abacus 06 CDO down significantly.

160. On June 14, Goldman agreed, *inter alia*, to repurchase this tranche of Abacus 06 from BSAM at a reduced price.

161. The price Goldman paid BSAM for this comparable Abacus 06 security confirmed that Goldman had significantly overcharged BYAFM for BYAFM's contemporaneous Timberwolf purchases.

162. In light of this contemporaneous transaction concerning Abacus 06 between Goldman and BSAM, Lehman's representation to BYAFM, as alleged at ¶ 74, that the price Goldman was offering on the Timberwolf securities to BYAFM was a good entry price and level was knowingly false and misleading.

(3) Cash Flow Statements

163. As part of the negotiations leading up to BYAFM's purchase of Timberwolf securities and in order to induce BYAFM to make the purchase, George Maltezos, as agent for GSJBW, delivered to BYAFM a series of cash flow projections for Timberwolf. The cash flow

projections had been prepared by GSG and GSC in New York for use by Goldman in marketing Timberwolf.

164. Maltezos led BYAFM to believe, and BYAFM did believe, that the cash flow projections were based on the most recent and accurate information available to Goldman. The cash flows purported to be "based solely upon the current expected liability structure and current market conditions." They showed substantial expected repayments of principal for the first and each subsequent period of the investment.

165. At the time that Goldman showed BYAFM its cash flow projections for Timberwolf, Goldman, through GSI as the credit default swap counterparty to transactions underlying the Timberwolf security, had current and timely information as to the actual performance, including principal repayments, of these underlying securities. This performance information showed Goldman that the actual level of repayment of principal made on the assets and reference securities underlying Timberwolf was substantially below what was forecasted in the cash flow projections.

166. Notwithstanding this information, Goldman did not revise the cash flow projections to reflect this information or otherwise advise BYAFM that the current level of actual repayments was substantially below the projections Goldman had made and that the cash flow projections were thereby grossly inflated, false, and misleading. Cash flow was critically important because the projections showed significant front loaded repayment, which limited downside risk. The actual cash flow performance made clear that those early repayments were illusory. Had Goldman provided projections based on the performance of the security of which they were aware, it would have been apparent that the security was not performing, that the early

cash flow returns promised to BYAFM would not occur and that the security was already in deep trouble.

F. Goldman's Manipulation of Ratings Agencies

167. When Goldman represented to BYAFM that the Point Pleasant and Timberwolf bonds had been independently rated by the rating agencies S&P and Moody's, it knew that the ratings given to these bonds were unjustified.

168. In rating a CDO comprised of underlying RMBS, cash CDOs, and synthetic CDOs, the rating agencies do not investigate or review the individual mortgages files on which these securities are based but are largely dependent on the underwriting investment banks, like Goldman, to provide them with accurate and complete information as to these underlying mortgages.

169. Goldman served as the placing agent for both Timberwolf and Point Pleasant. Goldman worked directly with the rating agencies to design and structure Timberwolf and Point Pleasant so that they would appear to meet the criteria used by the rating agencies.

170. Goldman knew that it had failed to disclose to the rating agencies negative information in its possession regarding the quality of the Point Pleasant and Timberwolf bonds and their underlying assets and reference securities. Goldman knew, but did not advise S&P or Moody's, that (i) the underlying securities were selected for their poor quality and that Goldman was betting against the success of these offerings; and (ii) Goldman's internal and outside due diligence had confirmed this poor quality. By withholding this crucial information, Goldman corrupted the rating process.

171. Goldman deliberately manipulated the ratings on these bonds in order to give high risk assets the veneer of safety and low risk. This manipulation came in numerous forms,

including pressuring the rating agencies for favorable ratings, playing the rating agencies off against each other with the threat of withholding future business if the bonds were not given favorable treatment, and engaging in "ratings arbitrage" in an effort to pack the offerings with higher risk assets without triggering lower rating scores. For example, Richard Michalek, former Vice President/Senior Credit Officer of Moody's Investors Service, testified before the PSI:

> Goldman Sachs was well known by the lawyers in the [Structured Products Derivatives Group] for consistently producing as their "preferred form of document" the most "risk seller friendly" precedent *[i.e.,* the most favorable to Goldman Sachs], even if it had been drafted by a law firm other than the firm working for Goldman at the time. ...While Goldman Sachs was not the only investment bank that used the practice of rotating law firms, in part to gain access to the broadest selection of precedent documentation and thereby the greatest potential for finding a precedent that supported Goldman's preferred language, ***they were the only bank I knew of that employed someone whose primary job was - to put it politely - arbitrage the rating agencies***. It was not difficult to know where Moody's stood in terms of the relative conservatism of our modeling assumptions and drafting requests; Goldman was very prompt when informing us that "S&P doesn't require that."

(Written Statement of Richard Michalek (emphasis added).)

172. Goldman also pressured the rating agency not to use certain staff members who were known to impose more stringent requirements on the financial products being rated. Richard Michalek testified before the PSI that he was explicitly told that "a CDO team leader at Goldman Sachs also asked, while praising the thoroughness of my work, that after four transactions he would prefer another lawyer be given an opportunity to work on his deals." (PSI Report at 286.)

G. Goldman's Cover-up on Its Point Pleasant Marks

173. Goldman knew that the price at which it sold Point Pleasant bonds to BYAFM was excessive due to the poor quality of those bonds and that their value continued to deteriorate after the sale, including during the period when Goldman was trying to persuade BYAFM to make a much larger investment in Timberwolf.

174. Internally, Goldman's CDO valuation project had placed a lower value on Point Pleasant than the price at which it offered to sell Point Pleasant interests to BYAFM, as alleged in ¶ 117 above. When BYAFM received margin calls from Goldman reflecting the deterioration in value, as alleged in ¶¶ 54-58 above, Goldman personnel who were trying to close a deal with BYAFM on Timberwolf caused these margin calls to be quickly retracted, explained that they were a mistake, and represented that Point Pleasant was maintaining its value. When Goldman finally did issue a margin call to BYAFM on Point Pleasant that it let stand, as alleged in ¶ 58 above, it set the mark at $75 notwithstanding that its internal valuation had pegged it at $50.

175. Goldman's explanations that its margin calls were sent by mistake and that Point Pleasant was maintaining its value or only deteriorating slightly were knowingly false and misleading and were calculated to avoid taking any steps that might discourage BYAFM from purchasing interests in Timberwolf.

BYAFM's Reasonable Reliance on Goldman's Misrepresentations

176. BYAFM reasonably and justifiably relied on Goldman's representations as to the quality and current value of the Point Pleasant and Timberwolf offerings it recommended and as to its belief that the market for these securities was stable and that they would perform well over time.

177. BYAFM reasonably and justifiably relied on Goldman's representations that its interests were aligned with BYAFM's interests, that the offerings' underlying assets and reference securities had been independently selected, sourced from the market, and chosen to produce good performance, and that the ratings assigned to these securities by S&P and Moody's were justified and arrived at independent of Goldman's influence.

178. As the Comptroller of the Currency has acknowledged, "the rating agencies perform a critical role in structured finance – evaluating the credit quality of the transactions. Such agencies are considered credible because they possess the expertise to evaluate various underlying asset types, and because they do not have a financial interest in a security's cost or yield. Ratings are important because investors generally accept ratings by the major public rating agencies in lieu of conducting a due diligence investigation of the underlying assets and the servicer." (*See* 11/1997 Comptroller of the Currency Administrator of National Banks Comptroller's Handbook, "Asset Securitization," at 11.)

179. BYAFM reasonably relied on Goldman's representatives about Greywolf's role in the Timberwolf transaction as a collateral manager. BYAFM reasonably believed that Greywolf, as a collateral manager that earned a fee for selecting the CDO assets that were the constituent parts of Timberwolf, would act to further the interests of the investors in Timberwolf. Goldman understood that BYAFM did not, as a matter of policy, invest in CDOs that did not have an independent collateral manager. As a result, Goldman understood that BYAFM would rely on Greywolf's assessment and investigation of the Timberwolf assets, and would not itself independently investigate or evaluate the constituent assets of Timberwolf.

180. BYAFM did not know and had no reasonably available information that would have permitted it to know that Goldman's representations were false and misleading and that

Goldman had intentionally failed to disclose materially important information known to Goldman but not known to BYAFM bearing on these representations.

181. As a consequence of these misrepresentations and culpable omissions, BYAFM was induced to purchase its interests in Point Pleasant and Timberwolf to its damage.

COUNT I
(Common Law Fraud)

182. Each allegation of ¶¶ 1-181 is incorporated in this count by reference as if set out in full.

183. Goldman made material false representations and culpable omissions as described above in order to induce BYAFM to purchase the interests in Point Pleasant and enter into the Timberwolf CDS that Goldman recommended.

184. Goldman knowingly made these false representations and culpable omissions with the intent to defraud BYAFM.

185. BYAFM reasonably and justifiably relied on Goldman's false representations and culpable omissions in deciding to enter into the transactions. As a result, BYAFM suffered damages in an amount to be proved at trial but which are estimated at not less than $67 million plus consequential damages.

186. Goldman's actions towards BYAFM regarding these transactions, including the false misrepresentations and culpable omissions as alleged above, were egregious in nature. Goldman's actions were directed at BYAFM, and in addition, were part of a larger scheme to defraud other investors and induce them to buy impaired securities that were designed to fail and generate huge profits for Goldman. By knowingly putting these securities into the stream of commerce, Goldman caused damage far beyond the damage suffered by BYAFM. Accordingly, Goldman should also be required to pay substantial punitive damages.

COUNT II
(Fraudulent Inducement)

187. Each allegation of ¶¶ 1-181 is incorporated in this count by reference as if set out in full.

188. Goldman made materially false statements and wrongfully omitted material facts in communications, both written and oral, with BYAFM.

189. Goldman knew that these statements were false when made, and Goldman knew that it had wrongfully omitted material facts at the time it made the omissions.

190. Goldman made the materially false statements and wrongly omitted material facts in order to induce BYAFM to purchase an interest in Point Pleasant and enter into CDS that referenced Timberwolf.

191. BYAFM reasonably and justifiably relied on Goldman's false representations and culpable omissions in deciding to enter into the transactions. As a result, BYAFM suffered damages in an amount to be proved at trial but which are estimated at not less than $67 million plus consequential damages resulting from BYAFM's liquidation. Alternatively, BYAFM is entitled to rescission.

192. Goldman's actions towards BYAFM regarding these transactions, including the false misrepresentations and culpable omissions as alleged above, were egregious in nature. Goldman's actions were directed at BYAFM, and in addition, were part of a larger scheme to defraud other investors and induce them to buy impaired securities and generate huge profits for Goldman. By knowingly putting these securities into the stream of commerce, Goldman caused damage far beyond the damage suffered by BYAFM. Accordingly, Goldman should also be required to pay substantial punitive damages.

COUNT III
(Fraudulent Concealment)

193. Each allegation of ¶¶ 1-181 is incorporated in this count by reference as if set out in full.

194. Goldman suppressed and concealed material information concerning the Point Pleasant marks, concerning the impairment of Timberwolf and its components, concerning Goldman's disposal of its equity interest in Timberwolf, and other material information as detailed above.

195. Goldman had a duty of disclosure to BYAFM due to its unique position and knowledge of materials facts concerning Point Pleasant and Timberwolf and its knowledge that BYAFM did not know about these facts.

196. This information about Timberwolf and Point Pleasant could not have been discovered by BYAFM and/or was not reasonably available to BYAFM.

197. Goldman knew that BYAFM was making its decisions with regard to Point Pleasant and Timberwolf on the basis of mistaken information about these securities, and/or without knowing the material facts about Timberwolf and Point Pleasant that were known to Goldman.

198. BYAFM reasonably and justifiably relied on Goldman's false representations and culpable omissions in deciding to enter into the transactions. As a result, BYAFM suffered damages in an amount to be proved at trial but which are estimated at not less than $ 67 million plus consequential damages. Alternatively, BYAFM is entitled to rescission.

199. Goldman's actions towards BYAFM regarding these transactions, including the false misrepresentations and culpable omissions as alleged above, were egregious in nature. Goldman's actions were directed at BYAFM, and in addition, were part of a larger scheme to

defraud other investors and induce them to buy bogus securities and generate huge profits for Goldman. By knowingly putting these securities into the stream of commerce, Goldman caused damage far beyond the damage suffered by BYAFM. Accordingly, Goldman should also be required to pay substantial punitive damages.

COUNT IV
(Breach of Contract)

200. Each allegation of ¶¶ 1-181 is incorporated in this count by reference.

201. Goldman and BYAFM entered into CDS pursuant to which BYAFM sold protection to Goldman on two tranches of Timberwolf.

202. The rating of the two Timberwolf tranches was a material term of the CDS. The two tranches were required to be rated AAA and AA.

203. In fact, as Goldman well knew, the two Timberwolf tranches were far riskier than securities with AAA or AA ratings.

204. Moreover, by the time BYAFM entered into the two CDS, the two tranches of Timberwolf were already significantly impaired in value, an impairment that was inconsistent with the AAA and AA ratings that had been given to the tranches.

205. By failing to provide reference obligations with a quality of AAA and AA ratings, Goldman breached the CDS.

206. BYAFM has been harmed by this breach in an amount to be proved at trial.

COUNT V
(Negligent Misrepresentation)

207. Each allegation of ¶¶ 1-181 is incorporated in this count by reference as if set out in full.

208. As set forth above, Goldman had access to considerable information concerning the market in general and these particular securities at issue here, which information was not

generally known and was not known to BYAFM. Accordingly, BYAFM was heavily reliant on Goldman's special and unique knowledge concerning these securities

209. As underwriter and placing agent for Timberwolf and Point Pleasant, Goldman had a duty to exercise due care in its statements and representations so as not to mislead or deceive investors like BYAFM.

210. Notwithstanding that duty, Goldman did not exercise due care to make sure that its statements and representations to BYAFM were accurate and complete. To the contrary, Goldman negligently made false statements which were intended to and did induce BYAFM to agree to and enter the Timberwolf and Point Pleasant transactions.

211. Among the statements made by Goldman, which it knew or was negligent in not knowing at the time, to be false were:

a. Goldman's incentives were aligned with those of investors such as BYAFM, because Goldman had invested in Timberwolf's equity;

b. Timberwolf's collateral had been carefully selected by an independent collateral manager, Greywolf, which had utilized a screening and selection process that was based on its (and Goldman's) aligned incentives;

c. Timberwolf's assets were sourced from the market rather than Goldman's own desks;

d. Independent credit ratings confirmed the credit quality of Timberwolf's notes;

e. The prices at which Goldman offered Timberwolf and Point Pleasant to BYAFM were accurate prices for the securities at the time;

f. The price at which Goldman offered Timberwolf was a good price and good entry level;

g. Goldman viewed the market as stable at the time BYAFM bought Timberwolf; and

h. Goldman had a single mark for each of its securities and did not maintain an internal mark different from the price at which securities were offered to BYAFM and other customers.

212. Goldman was further negligent in failing to disclose information that was material to BYAFM's decision to invest in Timberwolf and Point Pleasant, including among other things, that:

a. Goldman was aggressively and systematically shorting RMBS and CDOs collateralized by RMBS, and Timberwolf and Point Pleasant were used to further that shorting strategy;

b. Both Point Pleasant and Timberwolf had declined considerably in value prior to BYAFM's investment;

c. Goldman's internal marks for both Point Pleasant and Timberwolf were considerably below the price at which they were offered to BYAFM;

d. Goldman's incentive with respect to the Timberwolf CDOs was diametrically opposed to BYAFM's because Goldman was taking hundreds of millions of dollars of short positions against Timberwolf collateral;

e. Goldman, and not Greywolf, had selected Timberwolf's collateral;

f. Goldman had deliberately filled Timberwolf's collateral portfolio with poor quality assets that it expected would fail;

g. Timberwolf's collateral was not sourced from "the market" but rather came from Goldman's own desks, which devised Timberwolf as a way to transfer subprime-related risk off its balance sheet or take proprietary short positions; and

h. The credit ratings of the Timberwolf and Point Pleasant notes did not reflect their true credit quality.

213. BYAFM reasonably relied on these and other false statements and omissions by Goldman in its decisions to invest in the Timberwolf and Point Pleasant securities.

214. Goldman expected and intended that BYAFM would rely on Goldman in deciding whether to invest in Timberwolf and Point Pleasant, and Goldman understood that BYAFM would so rely.

215. As a direct, proximate and foreseeable result of Goldman's conduct, BYAFM has been damaged in an amount to be determined at trial, but in any event not less than $67 million plus consequential damages.

COUNT VI
(Breach of Implied Covenant of Good Faith and Fair Dealing)

216. Each allegation of ¶¶ 1-181 is incorporated in this count by reference as if set out in full.

217. The CDS between GSI and BYAFM bear substantial similarity to a contract of insurance with GSI, the Protection Buyer, as the insured party and BYAFM, the Protection Seller, as the insurer. Under the CDS, GSI agreed to make premium payments to BYAFM in return for protection furnished by BYAFM that the referenced Timberwolf notes would not fall in value.

218. Pursuant to the CDS, GSI was entitled to reevaluate and reprice the two Timberwolf tranches that were referenced in the CDS to reflect any movements in the fair market value of the Timberwolf tranches. If the fair market value of the Timberwolf tranches declined, GSI was entitled to issue notices to BYAFM to pay the amount of the decline in value. Internally, Goldman referred to this process as making a margin call on BYAFM. In insurance parlance, such notices constituted claims under the insurance policy.

219. A party seeking insurance coverage owes a duty of good faith and fair dealing to the insurer to provide accurate and complete information in its possession bearing on the risk insured. Similarly, Goldman had a duty to provide accurate and complete information bearing on the risk for which it was seeking protection.

220. A party seeking insurance coverage cannot properly contract for coverage of a pre-existing or known loss but can only contract for coverage of a loss that has not yet occurred but may occur in the future.

221. At the time GSI and BYAFM entered into the CDS, Goldman's internal valuation of the two Timberwolf tranches was already far below the price at which Goldman proposed to sell notes from those tranches to BYAFM, which, in turn, was the price against which BYAFM agreed to insure GSI that the notes would not decline (the "entry price"). GSI had actual knowledge of Goldman's internal valuation of the notes or GSI should be imputed to have had such knowledge by virtue of its relationship with GSG and GSC.

222. In breach of its duty of good faith and fair dealing, GSI failed to disclose to BYAFM the internal Goldman valuation of these notes.

223. At the time GSI and BYAFM entered into the CDS, the loss insured against had already occurred.

224. Since the risk insured was already a known loss at the time the insurance was agreed, the CDS are voidable by BYAFM.

225. BYAFM has been harmed by GSI's breach of the implied covenant of good faith and fair dealing in an amount to be proved at trial.

COUNT VII
(Unjust Enrichment)

226. Each allegation of ¶¶ 1-181 is incorporated in this count by reference as if set out in full.

227. Goldman has been enriched at the expense of BYAFM through:

- Selecting RMBS and other subprime-related collateral for Timberwolf and Point Pleasant that it believed would perform badly;

- Structuring Timberwolf and Point Pleasant as part of its strategy to rid itself of impaired collateral and short RMBS and CDOs that it believed would dramatically decline in value; and
- Receiving $40 million in the Cayman liquidation in allegedly unpaid margin calls when it was not entitled to that amounts.

228. Goldman unjustly retained these ill-gotten gains at BYAFM's expense.

229. Because Goldman received and unjustly retained such gains at BYAFM's expense, the parties should be returned to their original positions prior to Goldman's misconduct.

COUNT VIII
(Rescission)

230. Each allegation of ¶¶ 1-181 is incorporated in this count by reference as if set out in full.

231. Goldman made materially false statements and wrongfully omitted material facts in communications, both written and oral, with BYAFM.

232. BYAFM relied on its communications with Goldman to its detriment.

233. Accordingly, the contracts between Goldman and BYAFM pertaining to Point Pleasant and Timberwolf should be rescinded.

WHEREFORE, plaintiff BYAFM requests judgment against defendants GSG, GSI, GSC and GSJBW, jointly and severally, as follows:

(a) On counts I, II and III damages according to proof but not less than $67 million and punitive damages in the amount of $1 billion or as otherwise deemed appropriate;

(b) On counts IV and VI, damages to be proved at trial;

(c) On count V, damages according to proof but not less than $67 million plus consequential damages;

(d) On count VII, an Order requiring full restitution;

(e) On counts II, III and VIII, rescission of the contracts between BYAFM and Goldman pertaining to Point Pleasant and Timberwolf;

(f) On all counts, the costs and disbursements of this action, interest, and reasonable attorneys' fees; and

(g) Such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff BYAFM hereby demands a trial by jury of all claims and issues so triable.

October 27, 2011

Eric L. Lewis
Bruce R. Grace
LEWIS BAACH PLLC
1201 F Street, N.W., Suite 500
Washington, DC 20004
Tel: (202) 833-8900
Fax: (202) 466-5738
Eric.Lewis@lewisbaach.com
Bruce.Grace@lewisbaach.com