

ORIGINAL FILED

APR 22 2009

**LOS ANGELES
SUPERIOR COURT**

1 COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
2 SPENCER A. BURKHOLZ (147029)
THOMAS E. EGLER (189871)
3 DANIEL S. DROSMAN (200643)
SCOTT H. SAHAM (188355)
4 LAUREN G. KERKHOFF (236902)
JENNIFER Y. LAI (228117)
5 CHRISTINA A. ROYCE (254551)
655 West Broadway, Suite 1900
6 San Diego, CA 92101
Telephone: 619/231-1058
7 619/231-7423 (fax)

8 BARROWAY TOPAZ KESSLER
MELTZER & CHECK, LLP
9 ANDREW L. ZIVITZ (admitted *pro hac vice*)
SHARAN NIRMUL (admitted *pro hac vice*)
10 LAUREN WAGNER PEDERSON (admitted *pro hac vice*)
JENNIFER L. KEENEY (admitted *pro hac vice*)
11 280 King of Prussia Road
Radnor, PA 19087
12 Telephone: 610/667-7706
610/667-7056 (fax)

13 Co-Lead Counsel for Plaintiffs
14 [Additional counsel appear on signature page.]
15

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF LOS ANGELES

18 DAVID H. LUTHER, Individually and On
Behalf of All Others Similarly Situated,
19 Plaintiff,
20 vs.
21 COUNTRYWIDE HOME LOANS
SERVICING, LP, et al.,
22 Defendants.
23

) Lead Case No. BC 380698
) CLASS ACTION
) Assigned to: the Honorable Emilie H. Elias
) STIPULATION AND ~~PROPOSED~~
) CONSENT ORDER REGARDING
) DISMISSAL OF THOMAS H. BOONE WITH
) PREJUDICE AND MUTUAL RELEASE;
) DECLARATION OF ANDREW L. ZIVITZ IN
) SUPPORT THEREOF

DEPT: 308
DATE ACTION FILED: 11/14/07

24
25
26
27
28 STIPULATION AND [PROPOSED] CONSENT ORDER REGARDING DISMISSAL OF
THOMAS H. BOONE WITH PREJUDICE AND MUTUAL RELEASE; DECLARATION OF ANDREW L. ZIVITZ
IN SUPPORT THEREOF

1 This STIPULATION AND [PROPOSED] CONSENT ORDER REGARDING DISMISSAL
2 OF THOMAS H. BOONE AND MUTUAL RELEASE ("Stipulation" or "Agreement"), dated as of
3 April 1, 2009, is made and entered into between and among (i) Vermont Pension Investment
4 Committee (the "VPIC"), Mashreqbank, p.s.c. ("Mashreq"), Pension Trust Fund for Operating
5 Engineers, Operating Engineers Annuity Plan, Washington State Plumbing & Pipefitting Pension
6 Trust ("Washington"), Maine Retirement System ("MSRS"), and David H. Luther (each
7 individually a "Plaintiff," collectively, the "Plaintiffs"), and (ii) individual defendant Thomas H.
8 Boone ("Boone").

9 WHEREAS, the Plaintiffs asserted claims individually and on behalf of an alleged class of
10 persons or entities who purchased or otherwise acquired (1) Alternative Loan Trust Certificates, (2)
11 CWABS Asset-Backed Trust Certificates, (3) CHL Mortgage Pass-Through Trust Certificates and
12 (4) CWHEQ Revolving Home Equity Loan Trusts and Home Equity Loan Trusts pursuant or
13 traceable to registration statements and prospectus supplements (the "Class") in *David H. Luther v.*
14 *Countrywide Home Loans Servicing, L.P., et al.*, Los Angeles Superior Court Lead Case No. BC
15 380698 (together with all the cases consolidated therewith, the "Action") against Boone and others
16 for, among other things, alleged violations of Section 11 of the Securities Act of 1933 (15 U.S.C. §
17 77k) as stated in the Consolidated Complaint for Violation of §§11, 12(a)(2) and 15 of the
18 Securities Act of 1933 dated October 16, 2008 (the "Consolidated Complaint") (*see Decl. of*
19 *Andrew L. Zivitz at ¶2*);

20 WHEREAS, on March 6, 2009, Boone filed a Notice of Demurrer and Demurrer (the
21 "Demurrer") (scheduled for hearing on May 14, 2009 at 9:00 am) asserting that the Consolidated
22 Complaint should be dismissed with respect to Boone (*see id. at ¶3*);

23 WHEREAS, Plaintiffs' response to Boone's Demurrer is due to be filed on April 3, 2009
24 (*see id.*);

25 WHEREAS, the parties wish to resolve this matter such that (1) the Plaintiffs will dismiss
26 with prejudice the Consolidated Complaint as against Defendant Boone in accordance with the

1 terms of the Agreement below, and (2) the Plaintiffs will have no obligation to file an opposition to
2 Boone's Demurrer while this Stipulation is pending before the Court and if the Court grants this
3 [Proposed] Order;

4 WHEREAS, no consideration, direct or indirect, has been provided to the Plaintiffs or their
5 attorneys for the proposed dismissal except as provided for in the below Agreement (*see id.* at ¶4);

6 WHEREAS, in consideration of the covenants and agreements contained in this Agreement,
7 and in full and complete release and discharge and dismissal of all claims relating in any way to the
8 claims asserted in, or the prosecution, defense or settlement of, the Action, except as expressly
9 provided otherwise below, the Plaintiffs and Boone hereby stipulate and agree as follows:

10 1. Upon the date of execution of this Agreement, subject to the approval of the Court
11 pursuant to California Rule of Court 3.770(a):

12 (a) the Plaintiffs shall be deemed to have, and by operation of law shall have,
13 fully, finally and forever released, relinquished, and discharged Boone from any and all
14 claims asserted or that could have been asserted in the Action by the Plaintiffs, and Boone
15 hereby is dismissed from this Action with prejudice as to the Plaintiffs' claims;

16 (b) Boone is hereby dismissed from this Action without prejudice as to other
17 members of the alleged Class; and

18 (c) the Plaintiffs and their past and present officers, directors, employees,
19 attorneys, divisions, representatives and assigns, on the one hand, and Boone and his
20 attorneys, representatives and assigns, on the other hand, mutually agree not to assert any
21 claim against the other(s) that has or could have been asserted in this matter, including but
22 not limited to any claim for fees and expenses, costs, or any claim that the Action was
23 brought or defended in bad faith or without a reasonable basis.


24 2. This Agreement constitutes the entire and complete agreement between Plaintiffs
25 and Boone, the terms and conditions contained herein are contractual and not a mere recital, and
26 such terms and conditions shall not be amended, supplemented or abrogated other than by a written

1 instrument signed by each affected party hereto, or by the authorized representative of each party,
2 and subsequently approved by the Court.


3 3. This Agreement may be executed in one or more counterparts, each of which shall be
4 deemed an original, but all of which together shall constitute one and the same instrument.

5 4. This Agreement shall not be construed against the party preparing it, but shall be
6 construed as if the parties jointly prepared this Agreement, and any uncertainty or ambiguity shall
7 not on the ground of authorship be interpreted against any one party.

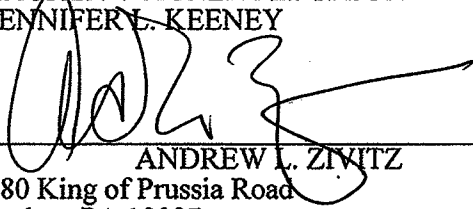
8 THEREFORE, based upon the agreement of the parties and for good cause shown, IT IS SO
9 ORDERED this 22 day of April, 2009.


THE HONORABLE EMILIE H. ELIAS
JUDGE OF THE LOS ANGELES SUPERIOR
COURT

12 CONSENTED TO:
13 COUGHLIN STOIA GELLER
14 RUDMAN & ROBBINS LLP
15 SPENCER A. BURKHOLZ
16 THOMAS E. EGLER
17 DANIEL S. DROSMAN
18 SCOTT H. SAHAM
19 LAUREN G. KERKHOFF
20 JENNIFER Y. LAI
21 CHRISTINA A. ROYCE


SCOTT H. SAHAM
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

1 BARROWAY TOPAZ KESSLER
2 MELTZER & CHECK, LLP
3 ANDREW L. ZIVITZ
4 SHARAN NIRMUL
5 LAUREN WAGNER PEDERSON
6 JENNIFER L. KEENEY



7 ANDREW L. ZIVITZ
8 280 King of Prussia Road
9 Radnor PA 19087
10 Telephone: 610/667-7706
11 610-667-7056 (fax)

12 Co-Lead Counsel for Plaintiffs

13 PAUL, HASTINGS, JANOFSKY & WALKER LLP
14 WILLIAM F. SULLIVAN
15 THOMAS A. ZACCARO
16 JOSHUA G. HAMILTON
17 PETER Y. CHO



18 WILLIAM F. SULLIVAN
19 515 South Flower Street, 25th Floor
20 Los Angeles, CA 90071
21 Telephone: 213/683-6000
22 213-627-0705 (fax)

23 Attorneys for Defendant Thomas H. Boone
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF ELECTRONIC SERVICE

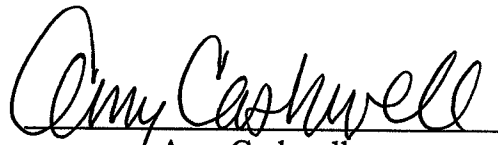
I, the undersigned, declare:

I am employed in the county of Delaware, State of Pennsylvania. I am over the age of 18 and not a party to the within action; my business address is 280 King of Prussia Road, Radnor PA 19087. On April 17, 2009, I served electronically the foregoing documents described as:

**STIPULATION AND [PROPOSED] CONSENT ORDER REGARDING
DISMISSAL OF THOMAS H. BOONE AND MUTUAL RELEASE;
DECLARARTION OF ANDREW L. ZIVITZ IN SUPPORT THEREOF**

on the interested parties, listed below, in this action by filing them via LexisNexis File & Serve system with the Superior Court of the State of California for the County of Los Angeles.

Executed on April 17, 2009 at Radnor, Pennsylvania.


Amy Cashwell

SERVICE LIST

David Luther, et al. v. Countrywide Financial Corporation, et al.
Lead Case No. BC 380698

Spencer A. Burkholz
spenceb@csgrr.com

Thomas E. Egler
tome@csgrr.com

Daniel S. Drosman
ddrosman@csgrr.com

Scott H. Saham
ssaham@csgrr.com

Lauren G. Kerkhoff
lkerhoff@csgrr.com

Jennifer Y. Lai
jlai@csgrr.com

Christina A. Royce
croyce@csgrr.com

**COUGHLIN STOIA GELLER RUDMAN
& ROBBINS LLP**

665 West Broadway Suite 1900
San Diego CA 92101
Telephone (619) 231-1058
Facsimile (619) 231-7423

Co-Lead Counsel for Plaintiffs

Christopher G. Caldwell
caldwell@caldwell-leslie.com

Andrew Esbenshade
esbenshade@caldwell-leslie.com

CALDWELL LESLIE & PROCTOR, PC
1000 Wilshire Boulevard Suite 600

Los Angeles CA 90017
Telephone (213) 629-9040
Facsimile (213) 629-9022

*Counsel for Defendants Stanford L. Kurland
and Jeffery P. Grogin*

Jennifer Sepic
jennifer.sepic@bingham.com
BINGHAM McCUTCHEM LLP
355 South Grand Avenue Suite 4400
Los Angeles CA 90071
Telephone (213) 680-6480
Facsimile (213) 680-6499

Counsel for Defendant David A. Spector

Brian E. Pastuszewski
bpastuszewski@goodwinprocter.com

Inez H. Friedman-Boyce
ifriedmanboyce@goodwinprocter.com

Chelsea W. Teachout
lteachout@goodwinprocter.com

Amy Harman Burkart
aburkart@goodwinprocter.com
GOODWIN PROCTER LLP

53 Exchange Place
Boston, MA 02109
Telephone (617) 570-1000
Facsimile (617) 523-1231

*Counsel for Defendants Countrywide
Financial Corporation, Countrywide Home
Loans, Inc., CWALT, Inc., CWMBS, Inc.,
CWABS, Inc., CWHEQ, Inc., Countrywide
Capital Markets, Countrywide Securities
Corporation, and N. Joshua Adler*

Leiv Blad
leiv.blad@bingham.com
Zarema V. Arutyunova
zarema.arutyunova@bingham.com
BINGHAM McCUTCHEM LLP
2020 K Street NW
Washington DC 20006
Telephone (202) 373-6000
Facsimile (202) 373-6001

Counsel for Defendant David A. Spector

Shirli Fabbri Weiss
shirli.weiss@dlapiper.com
DLA PIPER LLP
401 B Street Suite 1700
San Diego CA 92101
Telephone (619) 699-2700
Facsimile (619) 699-2701

Counsel for Defendant Eric P. Sieracki

1 Nicolas Morgan
nicolas.morgan@dlapiper.com
2 **DLA PIPER LLP**
1999 Avenue of the Stars Suite 400
3 Los Angeles CA 90067
Telephone (310) 595-3146
4 Facsimile (310) 595-3446
5 *Counsel for Defendant Eric P. Sieracki*

6
7
8
9
10

11 Penelope Graboys Blair
pgraboysblair@orrick.com
12 Theodora Manolova
tmanolova@orrick.com
13 Eunice Lee
ejlee@orrick.com
14 Katie Lieberg
klieberg@orrick.com
15 Ben Geiger
bgeiger@orrick.com
16 **ORRICK, HERRINGTON**
& SUTCLIFFE LLP
17 The Orrick Building
405 Howard Street
18 San Francisco CA 94105
Telephone (415) 773-5700
19 Facsimile (415) 773-5759

20 *Counsel for Defendant David Sambol*

21
22
23
24
25
26
27
28

William F. Sullivan
williamsullivan@paulhastings.com
Thomas A. Zaccaro
thomaszaccaro@paulhastings.com
Joshua G. Hamilton
joshuahamilton@paulhastings.com
Peter Cho
petercho@paulhastings.com
PAUL, HASTINGS, JANOFSKY &
WALKER LLP
515 South Flower Street 25th Floor
Los Angeles CA 90071
Telephone (213) 683-6000
Facsimile (213) 996-3252

*Counsel for Defendants Ranjit Kripalani,
Jennifer S. Sandefur, Thomas Keith
McLaughlin and Thomas H. Boone*

Michael C. Tu
ORRICK, HERRINGTON
& SUTCLIFFE LLP
777 South Figueroa Street, Suite 3200
Los Angeles CA 90017
Telephone (213) 629-2020
Facsimile (213) 612-2499
Email: mtu@orrick.com

Counsel for Defendant David Sambol

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dean J. Kitchens
dkitchens@gibsondunn.com
Lindsay Pennington
lpennington@gibsondunn.com
GIBSON DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles CA 90071
Telephone (213) 229-7000
Facsimile (213) 229-7520

Counsel for Defendants J.P. Morgan Securities Inc., Deutsche Bank Securities Inc., Bear, Stearns & Co., Inc., Banc of America Securities LLC, UBS Securities, LLC, Morgan Stanley & Co. Incorporated, Edward D. Jones & Co., L.P., Citigroup Global Markets Inc., Goldman, Sachs & Co., Credit Suisse Securities (USA) LLC, Greenwich Capital Markets, Inc. a.k.a. RBS Greenwich Capital, Barclays Capital Inc., HSBC Securities (USA), BNP Paribas Securities Corp., Merrill Lynch, Pierce, Fenner & Smith, Incorporated

Jonathan C. Dickey
jdickey@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue 48th Floor
New York NY 10166
Telephone (212) 351-2399
Facsimile (212) 351-6399

Counsel for Defendants J.P. Morgan Securities Inc., Deutsche Bank Securities Inc., Bear, Stearns & Co., Inc., Banc of America Securities LLC, UBS Securities, LLC, Morgan Stanley & Co. Incorporated, Edward D. Jones & Co., L.P., Citigroup Global Markets Inc., Goldman, Sachs & Co., Credit Suisse Securities (USA) LLC, Greenwich Capital Markets, Inc. a.k.a. RBS Greenwich Capital, Barclays Capital Inc., HSBC Securities (USA), BNP Paribas Securities Corp., Merrill Lynch, Pierce, Fenner & Smith, Incorporated