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19 UNITED STATES DISTRICT COURT  
20 CENTRAL DISTRICT OF CALIFORNIA

21 MAINE STATE RETIREMENT  
SYSTEM, Individually and On Behalf  
22 of All Others Similarly Situated,

23 Plaintiff,

24 vs.

25 COUNTRYWIDE FINANCIAL  
CORPORATION, et al.,

26 Defendants.

No. 2:10-cv-00302-MRP(MANx)

CLASS ACTION

MEMORANDUM OF LAW IN  
SUPPORT OF PLAINTIFFS'  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT

DATE: July 10, 2013  
TIME: 1:30 p.m.  
CTRM: 12, Honorable Mariana R.  
Pfaelzer

27 [Caption continued on following page.]  
28

1 WESTERN CONFERENCE OF  
2 TEAMSTERS PENSION TRUST  
3 FUND, Individually and On Behalf of  
4 All Others Similarly Situated,

Plaintiff,

vs.

5 COUNTRYWIDE FINANCIAL  
6 CORPORATION, et al.,

Defendants.

No. 2:12-cv-05122-MRP(MANx)

CLASS ACTION

8 DAVID H. LUTHER, et al.,  
9 Individually and On Behalf of All  
10 Others Similarly Situated,

Plaintiffs,

vs.

12 COUNTRYWIDE FINANCIAL  
13 CORPORATION, et al.,

Defendants.

No. 2:12-cv-05125-MRP(MANx)

CLASS ACTION

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1 **I. INTRODUCTION**

2 After more than five years of litigation, Plaintiffs<sup>1</sup> and Defendants have reached  
3 an agreement to settle the above-captioned securities class actions pursuant to the  
4 terms set forth in the accompanying Stipulation and Agreement of Settlement dated as  
5 of June 25, 2013 (the “Settlement Agreement”). The proposed Settlement provides  
6 for a cash payment of \$500,000,000.00 plus interest earned thereon, in exchange for  
7 the dismissal of all claims asserted in the Actions.

8 The Settlement is the product of a complex and hard-fought litigation across  
9 several cases followed by six months of arm’s-length settlement negotiations,  
10 including formal mediation under the auspices of a private mediator, Eric D. Green,  
11 with more than 30 years of complex mediation experience. Plaintiffs submit that the  
12 Settlement, which is the largest class Mortgage Backed Securities (“MBS”) settlement  
13 to date, is a very favorable result for the Class. This recovery is particularly  
14 significant when viewed in light of the risks the Class would face had the Actions  
15 continued, including the possible bankruptcy of Countrywide. Plaintiffs faced  
16 significant risks in overcoming Defendants’ challenges to Plaintiffs’ standing as well  
17 as Defendants’ statute of limitation arguments. In *Luther* specifically, motions to  
18 dismiss asserting lack of standing and timeliness arguments were pending when the  
19 Settlement was reached. In *Maine State*, the Court’s prior rulings limited actionable  
20 claims to eight individual MBS tranches out of the more than 9,000 tranches  
21 comprising nearly 430 offerings. If the *Maine State* rulings were applied to *Luther*,  
22 only 58 tranches would have remained. Defendants would also likely challenge class  
23 certification, and liability and damages issues at summary judgment and trial.  
24 Additionally, litigating these highly complex securities class actions to completion  
25 would result in substantial additional expense for all Parties.

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26  
27 <sup>1</sup> All capitalized terms not defined in this memorandum have the same meanings  
28 set forth in the Settlement Agreement.

1 Plaintiffs respectfully submit that for the reasons set forth herein, including the  
2 substantial discovery efforts undertaken, the proposed Settlement is fair, reasonable,  
3 and adequate, and therefore request the Court enter the [Proposed] Order Granting  
4 Preliminary Approval to Settlement and Directing Dissemination of Notice to the  
5 Class (“Preliminary Approval Order”), submitted herewith.

6 **II. SUMMARY OF THE ACTIONS**

7 The Settlement was reached on behalf of all purchasers or acquirers, during the  
8 period March 12, 2004 through and including the date on which the Preliminary  
9 Approval Order is issued by the Court, of any of the individual securities issued as  
10 part of the 429 MBS offerings (the “Certificates”) collectively identified in the  
11 complaints filed in the Actions and listed in Appendix A to the Settlement Agreement  
12 (the “Class”). Plaintiffs’ claims stem from Defendant Countrywide’s home loan  
13 origination practices in 2004-2007. Many of the loans Countrywide made to  
14 borrowers were pooled together by Defendants and deposited into qualifying special-  
15 purpose entities, referred to as the “issuing trusts,” which were created by Defendants  
16 CWALT, CWABS, CWMBS and CWHEQ, wholly-owned subsidiaries of  
17 Countrywide. These pools of mortgages were then securitized into MBS and sold by  
18 the issuing trusts and the Underwriter Defendants to Plaintiffs in the form of the  
19 Certificates. The issuing trusts issued Certificates via registration statements,  
20 prospectuses and prospectus supplements that included representations about: (i) the  
21 quality of the mortgage pools underlying the issuing trusts, such as the underwriting  
22 standards employed to originate the mortgages, the value of the collateral securing the  
23 mortgages, and the soundness of the appraisals used to arrive at this value; (ii) the  
24 mortgages’ loan-to-value (“LTV”) ratios; and (iii) other criteria that was used to  
25 qualify borrowers for the mortgages. Plaintiffs allege that the registration statements,  
26 prospectuses and prospectus supplements contained materially false and misleading  
27 statements and omitted material information in violation of Sections 11, 12(a)(2) and  
28

1 15 of the Securities Act of 1933 (the “1933 Act”), 15 U.S.C. §§77k, 77l(a)(2), and  
2 77o.

3 On November 14, 2007, David H. Luther filed an action in the Superior Court  
4 of California, County of Los Angeles, asserting claims under the 1933 Act on behalf  
5 of all persons and entities who acquired the Mortgage Pass-Through Certificates of  
6 CWALT pursuant and/or traceable to registration statements issued by CWALT  
7 between January 2005 and June 2007. On December 14, 2007, the action was  
8 removed to the United States District Court for the Central District of California (the  
9 “*Luther* Action”). On February 28, 2008, this Court granted Plaintiff’s motion to  
10 remand the *Luther* Action back to the Superior Court of California, County of Los  
11 Angeles. On July 16, 2008, the Ninth Circuit Court of Appeals affirmed the remand.

12 On June 12, 2008, Washington State Plumbing & Pipefitting Pension Trust filed  
13 a separate putative class action in the Superior Court of California, County of Los  
14 Angeles, asserting claims on behalf of all persons and entities who acquired  
15 Certificates of CWALT, the CWABS Asset-Backed Trust Certificates of CWABS,  
16 Inc., the CHL Mortgage Pass-Through Trust Certificates of CWMBS, Inc., the  
17 CWHEQ Home Equity Loan Trust, and the CWHEQ Revolving Home Equity Loan  
18 Trust Certificates of CWHEQ, Inc. pursuant or traceable to false and misleading  
19 Offering Documents issued between June 13, 2005 and December 27, 2007 (the  
20 “*Washington State* Action”). On September 9, 2008, David H. Luther amended his  
21 original complaint to include additional named plaintiffs Vermont Pension Investment  
22 Committee, Mashreqbank, P.S.C., Pension Trust for Operating Engineers, and  
23 Operating Engineers Annuity Plan and to bring the additional claims set forth in the  
24 *Washington State* Action.

25 On October 6, 2008, the Amended *Luther* and *Washington State* Actions were  
26 consolidated. Contemporaneously, the Superior Court appointed David H. Luther,  
27 Vermont Pension Investment Committee, Mashreqbank, P.S.C., Pension Trust for  
28 Operating Engineers, and Operating Engineers Annuity Plan, Washington State

1 Plumbing & Pipefitting Pension Trust, and newly added Plaintiff Maine State  
2 Retirement System as Co-Lead Plaintiffs, and appointed Coughlin Stoia Geller  
3 Rudman & Robbins LLP (n/k/a Robbins Geller Rudman & Dowd LLP) together with  
4 Schiffrin Barroway Topaz & Kessler LLP (n/k/a Kessler Topaz Meltzer & Check  
5 LLP) as Co-Lead Counsel for the class in the Consolidated Action.<sup>2</sup> A Consolidated  
6 Complaint was filed on October 16, 2008.

7 On March 6, 2009, defendants filed demurrers to the *Luther* Action, which were  
8 sustained on January 6, 2010. The *Luther* plaintiffs appealed the demurrers to the  
9 California Court of Appeal. In the interim, on November 17, 2010, Western  
10 Conference of Teamsters Pension Trust Fund filed a separate action in the Superior  
11 Court of California, County of Los Angeles (the “*Western Conference* Action”).<sup>3</sup> On  
12 May 18, 2011, the California Court of Appeal overturned the demurrer to the *Luther*  
13 Action. On December 19, 2011, Defendants renewed their demurrers in both the  
14 *Luther* and the *Western Conference* Actions.

15 Prior to a ruling on the demurrer, on June 12, 2012, the *Luther* Action was  
16 removed to the United States District Court for the Central District of California. On  
17 July 12, 2012, Co-Lead Plaintiffs moved to remand the *Luther* Action back to the  
18 Superior Court of California, County of Los Angeles. That motion was denied on  
19 August 31, 2012. On November 30, 2012, Defendants moved to dismiss the  
20 Consolidated Complaint. The motion to dismiss was fully briefed and this Court  
21 heard oral argument on the motion on March 13, 2013. On March 25, 2013, plaintiffs  
22 in the *Luther* and *Western Conference* Actions voluntarily dismissed, with prejudice,  
23 claims against defendant David A. Sambol. During the course of the *Luther* Action,

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24  
25 <sup>2</sup> The *Luther*, *Maine State*, and *Western Conference* Actions are referred to  
collectively as the “Actions.”

26 <sup>3</sup> In addition to the defendants named in the Consolidated Action, the *Western*  
27 *Conference* Action named Bank of America Corporation and NB Holdings  
28 Corporation as defendants.

1 Plaintiffs had been searching, reviewing or coding approximately 20 million pages of  
2 documents produced by Defendants.

3 On January 14, 2010, Maine State Retirement System filed a separate action in  
4 the United States District Court for the Central District of California in an attempt to  
5 preserve timeliness arguments while the *Luther* Action was on appeal (the “*Maine*  
6 *State Action*”). The *Maine State Action* asserted the same claims as those in the  
7 *Luther* Action. As a result of the lead plaintiff process, the Iowa Public Employees’  
8 Retirement System (“IPERS”) was selected as Lead Plaintiff and Cohen Milstein  
9 Sellers & Toll PLLC was appointed as Lead Counsel. On July 13, 2010, IPERS filed  
10 an Amended Consolidated Class Action Complaint adding General Board of Pension  
11 and Health Benefits of the United Methodist Church, Orange County Employees’  
12 Retirement System, and Oregon Public Employee Retirement System as named  
13 plaintiffs and Bank of America Corporation and NB Holdings Corporation as  
14 additional defendants.<sup>4</sup> On August 16, 2010, Defendants moved to dismiss the  
15 Amended Consolidated Class Action Complaint. On November 4, 2010, this Court  
16 granted in part the motion to dismiss. The *Maine State* Plaintiffs thereafter filed a  
17 Second Amended Complaint on December 6, 2010. On January 17, 2011, Defendants  
18 filed supplemental motions to dismiss. This Court dismissed, with prejudice,  
19 individual defendants Kripalani, Adler, and Sandefur and defendants Bank of America  
20 Corporation and NB Holdings Corporation from the *Maine State* Action. On May 5,  
21 2011, this Court issued a decision granting in part the Countrywide Defendants’  
22 second motion to dismiss, substantially narrowing the *Maine State* Action to include  
23 only nine specific tranches that were also purchased by the *Luther* Plaintiffs.<sup>5</sup>

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24  
25 <sup>4</sup> Maine State Retirement System is not a named plaintiff in the *Maine State*  
26 *Action*.

27 <sup>5</sup> The *Maine State* Plaintiffs subsequently acknowledged that claims related to  
28 one of these nine tranches, CWL 2005-11 AF3 had been included in error and did not  
meet the Court’s standing requirement.

1 On June 6, 2011, the *Maine State* Plaintiffs filed a Third Amended Complaint,  
2 together with a motion for class certification. On September 30, 2011, after class  
3 certification discovery was completed and an expert was deposed, parties to the *Maine*  
4 *State* Action stipulated to certification of a class consisting of eight sub-classes (one  
5 sub-class for each remaining tranche). Over the course of the next year, the parties  
6 engaged in a massive discovery program, including depositions as well as the  
7 exchange of expert reports. On November 21, 2012, the Court issued a decision in  
8 *Strategic Capital* holding that cross-jurisdictional tolling did not extend from the state  
9 court-filed *Luther* Action. *F.D.I.C. v. Countrywide Fin. Corp.*, No. 2:12-CV-4354  
10 MRP (MANx), 2012 WL 5900973 (C.D. Cal. Nov. 21, 2012). The *Strategic Capital*  
11 decision put claims in the *Maine State* Action at risk although the issue was never  
12 litigated.

### 13 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

14 Lead Plaintiffs and their counsel have diligently prosecuted the Actions, and  
15 after extensive, arm's-length negotiations with the assistance of a respected mediator,  
16 have reached an agreement with Defendants to settle the claims asserted for a total of  
17 \$500,000,000.00 in cash. Pursuant to the Settlement Agreement, the settlement  
18 proceeds will be transferred to an escrow account on or before fifteen (15) business  
19 days after the Court's entry of the Preliminary Approval Order.

20 With the assistance of the Honorable Nancy Gertner, a plan of allocation was  
21 devised that provides for the \$500 million settlement to be allocated to three types of  
22 claims, as follows: \$325 million of the \$500 million Settlement Amount will be  
23 allocated to the 58 Certificates purchased by Plaintiffs that are currently not subject to  
24 dismissal pursuant to the Court's Orders ("Live Represented Tranches"); \$125 million  
25 of the \$500 million Settlement Amount will be allocated to the 111 Certificates  
26 purchased by Plaintiffs that sought to act as class representatives but had their claims  
27 dismissed or their claims were subject to dismissal by the Court's Order ("Dismissed  
28 Represented Tranches"); and \$50 million of the \$500 million Settlement Amount will

1 be allocated to approximately 9,214 Certificates for which no plaintiff sought to act as  
2 class representative and were dismissed or subject to dismissal by the Court’s Order  
3 (“Unrepresented Dismissed Tranches”).

4 **IV. ARGUMENT**

5 **A. Standards for Preliminary Approval**

6 Consensual settlements are the preferred means of dispute resolution in  
7 complex class action litigation. *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th  
8 Cir. 2008) (“[T]here is a strong judicial policy that favors settlements, particularly  
9 where complex class action litigation is concerned.”). Indeed, such agreements should  
10 be deemed presumptively valid. *See Petrovic v. AMOCO Oil Co.*, 200 F.3d 1140,  
11 1148 (8th Cir. 1999) (“[a] strong public policy favors [settlement] agreements, and  
12 courts should approach them with a presumption in their favor”).<sup>6</sup>

13 Federal Rule of Civil Procedure 23(e) requires judicial approval for the  
14 compromise of claims brought on a class basis. Approval of a class action settlement  
15 under Rule 23(e) involves a two-step process: first, entry of a “preliminary approval”  
16 order; and second, after notice of the proposed settlement has been provided to the  
17 class and a hearing has been held to consider the fairness, reasonableness and  
18 adequacy of the proposed settlement, entry of a “final approval” order or judgment.  
19 *See Manual for Complex Litigation* §13.14 (4th ed. 2004). At the final approval  
20 hearing, the Court will have before it more detailed papers submitted in support of  
21 final approval of the proposed Settlement and only then will it be asked to make a  
22 final determination as to whether the Settlement is fair, reasonable, and adequate  
23 under all the circumstances. At this time, Plaintiffs only request that the Court grant  
24 preliminary approval of the Settlement so that notice of its terms can be provided to  
25 the Class.

26 \_\_\_\_\_

27 <sup>6</sup> Citations are omitted throughout unless otherwise indicated.

1           **B.     The Court Should Grant Preliminary Approval**

2           The decision to approve a settlement is committed to the sound discretion of the  
3 trial court. *Glass v. UBS Fin. Servs.*, No. 07-15278, 2009 U.S. App. LEXIS 2581, at  
4 \*3 (9th Cir. Feb. 9, 2009) (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458  
5 (9th Cir. 2000)). As set forth above, approval of a class action settlement requires two  
6 stages of judicial approval: (i) preliminary approval, followed by the distribution of  
7 notice to the class and (ii) final approval. *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D.  
8 468, 473 (E.D. Cal. 2010). To grant preliminary approval, the Court need only  
9 determine that the proposed settlement is “sufficient to warrant public notice and a  
10 hearing” regarding final approval. *Manual for Complex Litigation, supra*, §13.14, at  
11 173. The “Court need only determine whether the proposed settlement appears on its  
12 face to be fair” and “falls within the range of possible approval.” *Williams v. Costco*  
13 *Wholesale Corp.*, No. 02cv2003 IEG (AJB), 2010 U.S. Dist. LEXIS 19674, at \*15-  
14 \*16 (S.D. Cal. Mar. 4, 2010). As demonstrated below, the proposed Settlement is  
15 entitled to preliminary approval.

16           Although Rule 23(e) does not set forth the criteria by which a proposed  
17 settlement is to be evaluated, courts should conclude that the proposed settlement,  
18 taken as a whole, is fair, adequate, and reasonable. Fed. R. Civ. P. 23(e)(2); *see also*  
19 *Mego Fin.*, 213 F.3d at 458 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026  
20 (9th Cir. 1998)); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th  
21 Cir. 1982); *In re HP Laser Printer Litig.*, No. SACV 07-0667 AG (RNBx), 2011 U.S.  
22 Dist. LEXIS 98759, at \*9-\*10 (C. D. Cal. Aug. 31, 2011). In order to assess whether  
23 a proposed settlement is fair, reasonable and adequate, the Ninth Circuit set out the  
24 factors that the trial court should consider in *Officers for Justice*. These factors  
25 include: the strength of plaintiffs’ case; the risk, expense, complexity, and likely  
26 duration of further litigation; the risk of maintaining class action status throughout the  
27 trial; the amount offered in settlement; the extent of discovery completed, and the  
28 stage of the proceedings; the experience and views of counsel; the presence of a

1 governmental participant; and the reaction of the class members to the proposed  
2 settlement. *Officers for Justice*, 688 F.2d at 625; *HP Laser Printer*, 2011 U.S. Dist.  
3 LEXIS 98759, at \*10 (citing *Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 575 (9th Cir.  
4 2004)).

5       Though a full analysis of these factors is not required until the final approval  
6 stage, consideration of these factors on a preliminary basis supports the conclusion  
7 that the proposed Settlement is fair, adequate, reasonable and within the range of  
8 possible final approval, and entitled to preliminary approval. Plaintiffs therefore  
9 recommend that the Settlement be preliminarily approved by the Court.

10       First, “a presumption of correctness is said to attach to a class settlement  
11 reached in arm’s-length negotiations between experienced counsel after meaningful  
12 discovery.” *In re Broadcom Corp. Sec. Litig.*, No. SACV 01-275 DT (MLGx), 2005  
13 U.S. Dist. LEXIS 41983, at \*17 (C.D. Cal. Sept. 12, 2005) (quoting *In re Heritage*  
14 *Bond Litig.*, No. 02-ML-1475-DT, 2005 U.S. Dist. LEXIS 13555, at \*9 (C.D. Cal.  
15 June 10, 2005)). The proposed Settlement of the Actions is the product of extensive,  
16 arm’s-length negotiations conducted by experienced counsel and mediated by  
17 Professor Green, who has 30-plus years of experience in securities class action cases,  
18 including the *NY Funds* action before this Court. Moreover, the Parties participated in  
19 two separate mediation sessions with Professor Green and numerous conference calls  
20 in the ensuing months. During these sessions, Plaintiffs become fully aware of the  
21 strengths and weaknesses of their case, and thus were in a position to determine that  
22 the proposed Settlement is in the best interests of the Class. Accordingly, the fairness,  
23 adequacy, and reasonableness of the proposed Settlement may be presumed.

24       Second, the amount offered in settlement supports the proposed Settlement  
25 under the circumstances here. The \$500 million settlement amount represents a  
26 tremendous recovery for the Class in light of the substantial risks and uncertainties  
27 faced by Plaintiffs and Plaintiffs’ Counsel if they decided to continue litigating the  
28

1 Actions. Notably, the amount of the Settlement is the largest MBS class settlement to  
2 date.

3 Third, the extent of discovery completed and the stage of the litigation also  
4 support the proposed Settlement. *Officers for Justice*, 688 F.2d at 625. Plaintiffs had:  
5 completed discovery for and obtained class certification for eight tranches; taken  
6 numerous depositions as part of merits discovery, which involved the review of nearly  
7 20 million pages of documents; and, exchanged expert reports as they approached the  
8 summary judgment stage.<sup>7</sup>

9 These discovery efforts do not even include over five years of diligent  
10 prosecution in the *Luther* Action, including removals to federal court, remands to state  
11 court, and several appeals, and the search, review, and coding of 20 million pages of  
12 documents. Plaintiffs in the *Luther* and *Maine State* Actions filed several complaints  
13 and each opposed two motions to dismiss.

14 The mediation process between the Parties also demonstrates that the  
15 Settlement was hard-fought and negotiated at arm's-length. Beginning in November  
16 2012 and continuing over the course of the next six months, the Parties engaged in  
17 settlement negotiations that were complex, hard-fought, and included the determined  
18 assistance of Professor Green of Resolutions, LLC. At Professor Green's direction,  
19 the Parties submitted comprehensive mediation statements. The Parties also  
20 participated in two formal, in-person mediation sessions in Boston – one on  
21 November 5, 2012 and one on December 11, 2012 – with Professor Green and gave  
22 aggressive, detailed and thoughtful presentations on the perceived strengths and  
23 weaknesses of their respective cases. Although the Parties could not reach a  
24 settlement of the Actions at the mediation sessions, they continued their negotiations

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25  
26 <sup>7</sup> See *Louie v. Kaiser Found. Health Plan, Inc.*, No. 08-cv-0795 IEG RBB, 2008  
27 WL 4473183, at \*6 (S.D. Cal. Oct. 6, 2008) (“Class counsels’ extensive investigation,  
28 discovery, and research weighs in favor of preliminary settlement approval.”).

1 through numerous telephone conferences and conversations with Professor Green  
2 between December 2012 and March 2012.

3         It was only after four additional months of negotiations resulting in a mediator’s  
4 proposal, that the Parties were ultimately able to reach an agreement in principle. The  
5 Parties’ agreement in principle was followed by two additional months of hard-fought  
6 negotiations over the specific terms and language reflected in the Settlement  
7 Agreement and related exhibits. Courts have recognized that “[t]he assistance of an  
8 experienced mediator in the settlement process confirms that the settlement is non-  
9 collusive.” *Satchell v. Fed. Express Corp.*, No. C03-2659 SI, 2007 U.S. Dist. LEXIS  
10 99066, at \*17 (N.D. Apr. 13, Cal. 2007). *See also Morales v. Stevco, Inc.*, No. 1:09-  
11 cv-00704 AWI JLT, 2011 U.S. Dist. LEXIS 130604, at \*32 (E.D. Cal. Nov. 10, 2011)  
12 (Granting preliminary approval because, among other things, “[t]he parties utilized an  
13 impartial mediator, and the matter was ‘resolved by means of a mediator’s proposal.’  
14 Thus, the agreement is the product of non-collusive conduct.”); *Harris v. Vector Mktg.*  
15 *Corp.*, No. C-08-5198 EMC, 2011 U.S. Dist. LEXIS 48878, at \*25-\*26 (N.D. Cal.  
16 Apr. 29, 2011) (“[T]he parties reached their settlement during a mediation session  
17 conducted by [a mediator], who has significant experience mediating complex civil  
18 disputes. This further suggests that the parties reached the settlement in a  
19 procedurally sound manner and that it was not the result of collusion or bad faith by  
20 the parties or counsel.”); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848,  
21 852 (N.D. Cal. 2010) (same); *Carter v. Anderson Merchandisers, LP*, No. EDCV 08-  
22 0025-VAP (OPx), 2010 U.S. Dist. LEXIS 55581, at \*22 (C.D. Cal. May 11, 2010)  
23 (same). Thus, by the time the Parties reached the proposed Settlement, “the litigation  
24 had proceeded to a point in which both plaintiffs and defendants ‘ha[d] a clear view of  
25 the strengths and weaknesses of their cases.’” *In re Portal Software, Inc. Sec. Litig.*,  
26 No. C-03-5138 VRW, 2007 U.S. Dist. LEXIS 88886, at \*10 (N.D. Cal. Nov. 26,  
27 2007).

28

1 Fourth, courts recognize that the opinion of experienced counsel supporting the  
2 settlement is entitled to considerable weight. *Broadcom*, 2005 U.S. Dist. LEXIS  
3 41983, at \*16 (“[g]reat weight [should be] accorded to the recommendation of  
4 counsel, who are most closely acquainted with the facts of the underlying litigation”).  
5 Here, Plaintiffs’ Counsel (as well as Plaintiffs, a majority of which are sophisticated  
6 institutional investors) fully support the Settlement and it is their informed opinion  
7 that, given the risks associated with pursuing this matter through trial, as well as the  
8 risk, uncertainties and delays presented by further litigating the Actions, the  
9 Settlement is fair, reasonable and adequate, and in the best interests of the Class.

10 Finally, another “important consideration in judging the reasonableness of a  
11 settlement is the strength of the plaintiffs’ case on the merits balanced against the  
12 amount offered in the settlement.” *See id.* at \*12 (quoting 5 James Wm. Moore,  
13 *Moore’s Federal Practice* §23.85[2][b] (3d ed. 2002)). This factor also weighs in  
14 favor of granting preliminary approval of the Settlement. Plaintiffs firmly believe that  
15 they had a strong case on liability and damages. At the same time, however, Plaintiffs  
16 also recognize that establishing liability and damages at trial was by no means  
17 guaranteed in light of the posture of the Actions and Defendants’ defenses.

18 In considering whether to enter into the Settlement, Plaintiffs, represented by  
19 counsel highly experienced in securities litigation, took into particular account the  
20 risks inherent in continuing to litigate the Actions.<sup>8</sup> With respect to *Luther* and  
21 *Western Teamsters*, at the time the Settlement was reached, Defendants’ motions to  
22 dismiss were fully briefed and *sub judice*. Plaintiffs believe that the Settlement is fair  
23 and adequate due, in part, to the risk that the Court would accept the arguments in  
24 Defendant’ motions and significantly reduce the size of the proposed class based on  
25 standing and statute of limitations considerations. The Court previously applied

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26  
27 <sup>8</sup> *See, e.g., Churchill Vill.*, 361 F.3d at 576 (risk, expense, complexity, and likely  
28 duration of further litigation are factors supporting final approval of settlement).

1 similar principles in *Maine State* to substantially reduce the size of the proposed class  
2 to just eight tranches out of more than 9,000.<sup>9</sup> Plaintiffs faced tremendous risk at class  
3 certification, as the Court might not certify a class at all, and would limit any class to  
4 the specific tranches or Certificates Plaintiffs purchased. Even if class certification  
5 was granted, Defendants would challenge liability and damages at summary judgment  
6 and trial, and even if Plaintiffs prevailed, Defendants would undoubtedly appeal,  
7 resulting in delay and risk of reversal.

8 In sum, the proposed Settlement is the product of serious, informed, non-  
9 collusive negotiations and well within the range of possible approval. Further, the  
10 proposed Settlement confers a substantial and immediate benefit on the Class, while  
11 eliminating the very real risk of no recovery. Plaintiffs' Counsel and Plaintiffs firmly  
12 believe that the proposed Settlement merits this Court's final approval. At this time,  
13 however, the Court is only being asked to permit notice of the terms of the Settlement  
14 to be sent to the Class and to schedule a hearing, under Federal Rule of Civil  
15

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16  
17 <sup>9</sup> Defendants argued, and this Court has held, in similar actions, that: (a)  
18 Plaintiffs lack standing under both Article III of the U.S. Constitution and the 1933  
19 Act to assert claims relating to any Certificates that Plaintiffs did not actually  
20 purchase; (b) to the extent *Luther* tolled the 1933 Act's three-year statute of repose  
21 and one-year statute of limitations under *American Pipe & Constr. Co. v. Utah*, 414  
22 U.S. 538, 94 S. Ct. 756, 38 L. Ed. 713 (1974) ("*American Pipe*"), such tolling would  
23 apply only to the specific tranches that the *Luther* Lead Plaintiffs actually purchased  
24 and as to which they had standing; and (c) in any event, the filing of *Luther* in state  
25 court did not trigger *American Pipe* tolling because that class action tolling rule  
26 applies only with respect to putative class actions filed in federal court pursuant to the  
27 provisions of Federal Rule of Civil Procedure 23. More specifically, Defendants  
28 contended that if the Court applied its prior ruling in *Maine State* to *Luther*, it would  
result in limiting the class to only 55 tranches, out of the more than 9,000 tranches  
comprising nearly 430 offerings over which the *Luther* Lead Plaintiffs sued, whereas  
Plaintiffs believed 58 tranches would survive based on the Court's prior rulings. In  
addition, Defendants argued that all claims in *Western Teamsters* should be dismissed  
as untimely due to the running of the applicable statutes of limitations and repose in  
the absence of any class action tolling arising from the filing of *Luther* in state court,  
in accordance with the Court's recent holding in the *Strategic Capital Bank* case,  
which if applied, would, as Defendants asserted, require dismissing *Maine State* and  
*Western Teamsters* in their entirety.

1 Procedure 23(e), to consider any views expressed by Class Members regarding the  
2 fairness of the Settlement.

3 **V. CERTIFICATION OF THE CLASS UNDER FED. R. CIV. P. 23**  
4 **IS APPROPRIATE**

5 The Ninth Circuit has long recognized that class actions may be certified for the  
6 purpose of settlement only. *Hanlon*, 150 F.3d 101. Rule 23(a) sets forth the  
7 following four prerequisites to class certification: (i) numerosity, (ii) commonality,  
8 (iii) typicality, and (iv) adequacy of representation. In addition, the class must meet  
9 one of the three requirements of Rule 23(b). *See* Fed. R. Civ. P. 23; *In re UTStarcom,*  
10 *Inc. Sec. Litig.*, No. C 04-04908 JW, 2010 WL 1945737, at \*3 (N.D. Cal. May 12,  
11 2010) (citing *Hanlon*, 150 F.3d at 1019).<sup>10</sup>

12 Courts routinely endorse the use of the class action device to resolve claims  
13 brought under the federal securities laws. *See In re Cooper Cos. Sec. Litig.*, 254  
14 F.R.D. 628, 642 (C.D. Cal. 2009). “[C]lass actions commonly arise in securities fraud  
15 cases as the claims of separate investors are often too small to justify individual  
16 lawsuits, making class actions the only efficient deterrent against securities fraud.  
17 Accordingly, the Ninth Circuit and courts in this district hold a liberal view of class  
18 actions in securities litigation.” *In re Adobe Sys., Inc. Sec. Litig.*, 139 F.R.D. 150,  
19 152-53 (N.D. Cal. 1991). The Actions are no exception, and Plaintiffs submit that the  
20 proposed Class – for purposes of effectuating the Settlement, satisfies each of the  
21 requirements of Rules 23(a) and 23(b)(3).

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23  
24  
25 <sup>10</sup> Plaintiffs in *Maine State* previously moved for class certification. On  
26 September 30, 2011, the parties in *Maine State* stipulated to certification of a class  
27 consisting of eight sub-classes (one for each tranche remaining in the case). The  
28 Court certified the proposed class in *Maine State* on October 12, 2011 and notice was  
disseminated to the class. The Class being proposed in connection with the present  
Settlement encompasses the class previously certified in *Maine State*.

1           **A. Numerosity**

2           Rule 23(a)(1) requires that the class be so numerous that joinder of all class  
3 members is impracticable. The Ninth Circuit has stated that “‘impracticability’ does  
4 not mean ‘impossibility,’ but only the difficulty or inconvenience of joining all  
5 members of the class.” *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909,  
6 913-14 (9th Cir. 1964). Indeed, classes consisting of 25 members have been held to  
7 be large enough to justify certification. *See Perez-Funez v. Dist. Director,*  
8 *Immigration & Naturalization Serv.*, 611 F. Supp. 990, 995 (C.D. Cal. 1984); *see also*  
9 *In re Cirrus Logic Sec.*, 155 F.R.D. 654, 656 (N.D. Cal. 1994) (no set number cut-off  
10 for numerosity). Additionally, the exact size of the class need not be known so long  
11 as general knowledge and common sense indicate that the class is large. *Id.*

12           Here, the Actions cover more than 9,000 MBS tranches comprising nearly 430  
13 offerings. Accordingly, the proposed Class consists of thousands, if not hundreds of  
14 thousands, of investors who purchased or otherwise acquired the securities issued as  
15 part of the Offerings during the relevant time period. The parties stipulated that  
16 numerosity was met with respect to the eight tranches certified as sub-classes in the  
17 *Maine State* Action. Accordingly, there can be no dispute that the vastly greater  
18 number of tranches included in this Settlement were purchased by a much larger  
19 group of investors. A class of this size is sufficiently numerous to make individual  
20 joinder impracticable. Thus, the numerosity element is satisfied.

21           **B. Commonality**

22           Rule 23(a)(2) is satisfied where the proposed class representatives share at least  
23 one question of fact or law with the claims of the prospective class. *See In re*  
24 *Countrywide Fin. Corp. Sec. Litig.*, 273 F.R.D. 586, 596 (C.D. Cal. 2009)  
25 (“Commonality requires ‘questions of law or fact common to the class.’”). Further,  
26 commonality exists even if there are varying fact situations among individual  
27 members of the class so long as the claims of the plaintiffs and other class members  
28 are based on the same legal or remedial theory. *Blackie v. Barrack*, 524 F.2d 891, 902

1 (9th Cir. 1975); *see also In re THQ, Inc. Sec. Litig.*, No. CV 00-1783 AHM (Ex), 2002  
2 U.S. Dist. LEXIS 7753, at \*11 (C.D. Cal. Mar. 22, 2002) (noting that courts have  
3 found a single issue common to the proposed class satisfies Rule 23(a)(2)).

4 The common questions of fact and law include: (i) whether Defendants violated  
5 the federal securities laws; (ii) whether statements made by Defendants to the  
6 investing public in the registration statements and prospectus supplements both  
7 omitted and misrepresented material facts about the mortgages underlying the issuing  
8 trusts; and (iii) the extent – and proper measure – of the damages sustained by the  
9 members of the Class. *See Countrywide*, 273 F.R.D. at 597 (common questions with  
10 request to Section 11 claims include proof of material misrepresentation or omissions  
11 in registration statements and prospectuses shared by securities as well as defenses  
12 presented by defendants regarding plaintiffs’ failure to exercise due diligence).<sup>11</sup>

13 Securities actions containing common questions such as the ones listed above  
14 have repeatedly been held to be prime candidates for class certification. When  
15 certifying a Section 11 class composed of investors in ten different Trusts holding  
16 mortgage-backed securities, the Honorable David V. Kenyon in *In re Pilgrim Sec.*  
17 *Litig.* held as follows:

18 Plaintiffs’ [Complaint] is based upon Defendants’ alleged  
19 misrepresentations and omissions contained in registration statements  
20 and prospectuses about the contents of the Trusts’ portfolios, their  
21 illiquidity, and sensitivity to interest rate increases. While the proposed  
22 class members may have been exposed to different representations, the  
23

24 <sup>11</sup> Here, there are common questions of law and fact because Defendants’ alleged  
25 misconduct affected all Class Members in the same manner (*i.e.*, Defendants’ false  
26 and misleading statements and omissions artificially inflated the price of the securities  
27 issued as part of the Offerings). *See, e.g., In re Verisign, Inc. Sec. Litig.*, No. C 02-  
28 02270-JW, 2005 U.S. Dist LEXIS 10438, at \*32 (N.D. Cal. Jan. 13, 2005) (“Here, the  
issues common to the class – namely, the nature and extent of Defendants’ alleged  
misrepresentations and the like – are predominant.”).

1 common question of whether they were harmed by Defendants' alleged  
2 course of fraudulent conduct is sufficient to satisfy Rule 23(a)(2)'s  
3 commonality requirement.<sup>12</sup>

4 Additionally, because the core complaint of all Class Members is that they purchased  
5 the securities at issue at artificially inflated prices, the commonality requirement of  
6 Rule 23(a)(2) is satisfied.

### 7 C. Typicality

8 The typicality requirement of Rule 23(a)(3) is satisfied when the claims or  
9 defenses of the party or parties representing the class are typical of the claims or  
10 defenses of the other class members. *See Amchem Prods. v. Windsor*, 521 U.S. 591,  
11 625, 117 S. Ct. 2231, 2250, 138 L. Ed. 2d 689, 714 (1997) (common-issues test  
12 readily met in securities cases). However, differences in the amount of damages, the  
13 size or manner of purchase, the nature of the purchaser, and the date of purchase are  
14 insufficient to defeat class certification. *See Schlagal v. Learning Tree, Int'l*, No. CV  
15 98-6384 ABC (EX), 1999 WL 672306, at \*3 (C.D. Cal. Feb. 23, 1999) ("The  
16 typicality prerequisite may be met 'even though varying fact patterns support the  
17 claims or defenses of individual class members or there is a disparity in the damages  
18 by the representative parties and the other members of the class.'"). In other words,  
19 typicality exists "even where factual distinctions exist between the claims of the  
20 named representative and the other class members." *Danis v. USN Commc'ns, Inc.*,  
21 189 F.R.D. 391, 395-97 (N.D. Ill. 1999); *see also West v. Circle K Stores, Inc.*, No.  
22 CIV. S-04-0438 WBS GGH, 2006 WL 1652598, at \*5 (E.D. Cal. June 13, 2006).

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23  
24 <sup>12</sup> No. CV 94-8491-KN, 1996 WL 742448, at \*4 (C.D. Cal. Jan. 23, 1996); *see*  
25 *also In re Juniper Networks Sec. Litig.*, 264 F.R.D. 584, 588 (N.D. Cal. 2009)  
26 (certifying Section 11 class; common issues included "whether Defendants violated  
27 the federal securities laws" and "whether Defendants omitted or misrepresented  
28 material facts"); *Schaefer v. Overland Express Family of Funds*, 169 F.R.D. 124, 128  
(S.D. Cal. 1996) (rejecting defendants' attempt in Section 11 case to "'split hairs' . . .  
[to] argue that there are not common question of law and fact").

1 Here, the claims of Plaintiffs arise from the same events or course of conduct that give  
2 rise to claims of other Class Members, and the claims asserted are based on the same  
3 legal theory. *See UTStarcom*, 2010 WL 1945737, at \*5 (explaining that the test for  
4 typicality is “whether ‘other members have the same or similar injury, whether the  
5 action is based on conduct which is not unique to the named plaintiffs, and whether  
6 other class members have been injured by the same course of conduct’”) (quoting  
7 *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)). Indeed, the  
8 Actions satisfy the Rule 23(a)(3) typicality requirement because the claims of all Class  
9 Members derive from the same legal theories and allege the same set of operative  
10 facts. Plaintiffs, like the other Class Members, purchased or otherwise acquired the  
11 Certificates issued as part of the Offerings during the Class Period at artificially  
12 inflated prices and suffered damages when Defendants’ alleged misstatements and  
13 conduct were disclosed to the market, causing the prices of these securities to decline.  
14 All Class Members, therefore, were victims of this same common course of alleged  
15 conduct throughout the Class Period, and sustained damages as a result. *Id.*

16 Further, the proof that Plaintiffs would present to establish their claims also  
17 would prove the claims of the rest of the Class. Therefore, Plaintiffs’ Counsel  
18 respectfully submit that this Court should find that Plaintiffs’ claims are typical of the  
19 claims of the Class. *See Hodges v. Akeena Solar, Inc.*, 274 F.R.D. 259, 266-67 (N.D.  
20 Cal. 2011); *Cooper*, 254 F.R.D. at 635-36.

#### 21 **D. Adequacy**

22 The representative parties must satisfy Rule 23(a)’s adequacy requirement by  
23 showing that they will fairly and adequately protect the interests of the Class. To  
24 satisfy this requirement, the proposed class representative must be free of interests that  
25 are antagonistic to the other members of the class, and counsel representing the class  
26 must be qualified, experienced and capable of conducting the litigation. *Lerwill v.*  
27 *Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978); *Hanlon*, 150 F.3d at  
28 1020.

1 As described above, Plaintiffs have claims that are typical of and coextensive  
2 with those of the Class. Plaintiffs, like all Class Members, purchased or otherwise  
3 acquired the Certificates issued as part of the Offerings at artificially inflated prices as  
4 a result of Defendants' alleged materially false and misleading statements and/or  
5 omissions, and were allegedly damaged thereby. Further, Plaintiffs have retained  
6 counsel highly experienced in securities class action litigation and who have  
7 successfully prosecuted many securities and other complex class actions throughout  
8 the United States. Thus, Plaintiffs are adequate representatives of the Class, and their  
9 counsel are qualified, experienced and capable of prosecuting the Actions, in  
10 satisfaction of Rule 23(a)(4).<sup>13</sup>

11 **E. Common Questions of Law Predominate and a Class Action**  
12 **Is the Superior Method of Adjudication**

13 In addition to meeting the prerequisites of Rule 23(a), the Actions also satisfy  
14 Rule 23(b)(3), which requires that the proposed class representative establish that  
15 common questions of law or fact predominate over individual questions, and that a  
16 class action is superior to other available methods of adjudication. *See Erica P. John*  
17 *Fund, Inc. v. Halliburton Co.*, \_\_\_ U.S. \_\_\_, 131 S. Ct. 2179, 2184, 180 L. Ed. 2d 24,  
18 30 (2011).

19 Common questions of law and fact predominate and a class action is clearly the  
20 superior method available to fairly and efficiently litigate these securities actions.<sup>14</sup>

21 \_\_\_\_\_  
22 <sup>13</sup> On October 12, 2011, this Court ruled that the *Maine State* plaintiffs Iowa  
23 Public Employees' Retirement System, General Board of Pension and Health Benefits  
24 of the United Methodist Church, Orange County Employees' Retirement System, and  
25 Oregon Public Employee Retirement Board were adequate class representatives and  
26 that their counsel, Cohen Milstein Sellers & Toll PLLC was adequate class counsel

27 <sup>14</sup> When certifying a class for settlement purposes only, the standards for  
28 satisfying the class certification element of "superiority" under Rule 23(b)(3) may be  
relaxed because the Court does not need to consider the difficulties of managing the  
class in any future litigation or at trial. *See, e.g., Ybarrondo v. NCO Fin. Sys, Inc.*, No.  
05cv2057-L(JMA), 2009 WL 3612864, at \*7 n.3 (S.D. Cal. Oct. 28, 2009); *Murillo*,  
266 F.R.D. at 477. Indeed, courts have certified class actions for settlement purposes

1 “[C]ommon issues need only predominate, not outnumber individual issues.” *In re*  
2 *Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 359, 375 (N.D. Ohio 2001). Further,  
3 the superiority of class actions in large securities cases is well recognized. *See*  
4 *Amchem Prods.*, 521 U.S. at 625, 117 S. Ct. at 2250, 138 L. Ed. at 714 (finding  
5 common questions predominated in securities class action certified for settlement).

6 As discussed above, there are a number of common questions of law and fact  
7 that would warrant class certification of this matter. These questions clearly  
8 predominate over individual questions because Defendants’ alleged conduct affected  
9 all Class Members in the same manner. Indeed, issues relating to Defendants’ liability  
10 are common to all members of the Class. *See Katz v. China Century Dragon Media,*  
11 *Inc.*, 287 F.R.D. 575, 586 (C.D. Cal. 2012) (“The determination whether these  
12 [registration statements and prospectus supplements] contained false information is  
13 plainly a question common to the claims of the proposed class members.”).

14 Falsity and materiality are among the issues that “affect investors alike,” and  
15 whose proof “can be made on a class-wide basis” because they “affect[] investors in  
16 common.” *Schleicher v. Wendt*, 618 F.3d 679, 682, 685, 687 (7th Cir. 2010).  
17 Likewise, here, Defendants’ misstatements during the Class Period “affect[ed] [all]  
18 investors alike” and proof of falsity, materiality, . . . and causation will “be made on a  
19 class-wide basis.” *Id.* at 685, 687. As a result, common questions of law and fact  
20 predominate.

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22  
23 even where certification was or likely would have been denied for litigation purposes.  
24 *See, e.g., In re Initial Pub. Offering Sec. Litig.*, 260 F.R.D. 81, 116 & n.308 (S.D.N.Y.  
25 2009) (granting preliminary approval of a settlement class that included Section 11  
26 claimants who had been excluded from the litigation class on grounds of  
27 “predominance” and reasoning that the “predominance” and “manageability” concerns  
28 under Rule 23(b)(3) were intertwined and “because the litigation was no longer going  
to trial, manageability was no longer an issue, and the ‘predominance defect [ ] no  
longer fatal’”) (citing *In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186, 194-95  
(S.D.N.Y. 2005)).

1 In light of the foregoing, all of the requirements of Rule 23(a) and (b) are  
2 satisfied, and there are no issues that would prevent the Court from certifying this  
3 Class for settlement purposes, appointing Plaintiffs as class representatives, and  
4 appointing Plaintiffs' Counsel as counsel for the Class. *See, e.g., Wahl v. Am. Sec.*  
5 *Ins. Co.*, No. C08-00555-RS, 2011 U.S. Dist. LEXIS 59559, at \*5-\*6 (N.D. Cal. June  
6 2, 2011) (class certified for settlement purposes); *Gitten v. KCI USA, Inc.*, No. 09-CV-  
7 05843 RS, 2011 WL 1467360, at \*1 (N.D. Cal. Apr. 12, 2011) (same); *In re Skilled*  
8 *Healthcare Grp., Inc. Sec. Litig.*, No. CV 09-5416 DOC (RZx), 2011 WL 280991, at  
9 \*2 (C.D. Cal. Jan. 26, 2011) (same).

## 10 VI. THE PROPOSED NOTICE IS ADEQUATE

11 Federal Rule of Civil Procedure 23(e)(1) requires that “[t]he court must direct  
12 notice in a reasonable manner to all class members who would be bound by the  
13 proposal” (*i.e.*, the proposed Settlement). Here, the Parties negotiated the form of the  
14 Notice of Pendency and Proposed Settlement of Class Actions, Fairness Hearing and  
15 Motion for an Award of Attorneys' Fees and Litigation Expenses (the “Notice”) to be  
16 disseminated to all Persons who fall within the definition of the Class and whose  
17 names and addresses can be identified with reasonable effort. The Claims  
18 Administrator will send the Notice, along with a copy of the Proof of Claim, to  
19 entities which commonly hold securities in “street name” as nominees for the benefit  
20 of their customers who are the beneficial purchasers of the securities.<sup>15</sup> The Parties  
21 further propose to supplement the mailed Notice with the Summary Notice, to be  
22 published in the *Wall Street Journal Global* and *Investor's Business Daily* and  
23

24

25

26 <sup>15</sup> Any Notices returned as undeliverable will be re-mailed to the forwarding  
27 address. If no forwarding address is provided, the Claims Administrator will use  
28 reasonable efforts (including, but not limited, to an internet search) to locate an  
updated address and re-mail the Notice to the updated address. The time period in the  
proposed Notice plan allows sufficient time for these Class Members to timely submit  
a Proof of Claim form, file an objection or request exclusion from the Class.

29

1 transmitted over the *PR Newswire*. The Notice and Summary Notice are attached to  
2 the Stipulation as Exhibits A-1 and A-3.

3 In addition, Rule 23(h)(1) requires that “[n]otice of the motion [for attorneys’  
4 fees] must be served on all parties and, for motions by class counsel, directed to class  
5 members in a reasonable manner.” Fed. R. Civ. P. 23(h)(1). Here, the Notice satisfies  
6 the requirements of Rule 23(h)(1), as it notifies Class Members that Plaintiffs’  
7 Counsel will apply to the Court for attorneys’ fees in an amount of no more than 17%  
8 of the Gross Settlement Fund and expenses not to exceed \$4 million, plus interest on  
9 those amounts. *See* Exhibit A-1. Furthermore, in securities class actions, the PSLRA  
10 requires the notice of settlement to include: (1) “[t]he amount of the settlement  
11 proposed to be distributed to the parties to the action, determined in the aggregate and  
12 on an average per share basis”; (2) “[i]f the parties do not agree on the average amount  
13 of damages per share that would be recoverable if the plaintiff prevailed on each claim  
14 alleged under this title, a statement from each settling party concerning the issue or  
15 issues on which the parties disagree”; (3) “a statement indicating which parties or  
16 counsel intend to make . . . an application [for attorneys’ fees or costs], the amount of  
17 fees and costs that will be sought (including the amount of such fees and costs  
18 determined on an average per share basis), and a brief explanation supporting the fees  
19 and costs sought”; (4) “[t]he name, telephone number, and address of one or more  
20 representatives of counsel for the plaintiff class who will be reasonably available to  
21 answer questions from class members”; and (5) “[a] brief statement explaining the  
22 reasons why the parties are proposing the settlement.” 15 U.S.C. §78u-4(a)(7). The  
23 Notice includes all of the information required by the PSLRA, as well as additional  
24 relevant information.

25 The proposed form of Notice describes the proposed Settlement and sets forth  
26 the aggregate amount of the Settlement Amount (\$500,000,000.00) and the average  
27 distribution per damaged certificate if claims for 100% of such certificates are made  
28 for each of the three groups of tranches that are entitled to compensation: the live

1 tranches, the represented impaired tranches, and the unrepresented impaired tranches.  
2 The proposed Notice states the Parties' disagreement over liability and damages; sets  
3 out the maximum amount of attorneys' fees and expenses (in the aggregate and on a  
4 per certificate basis) that Plaintiffs' Counsel intend to seek in connection with final  
5 settlement approval; and describes the proposed Plan of Allocation. In addition, the  
6 Notice explains the nature, history, and status of the Actions; sets forth the definition  
7 of the Class; states the Class's claims and issues; discusses the rights of Persons who  
8 fall within the definition of the Class (including their right to request exclusion from  
9 the Class and their right to object to the Settlement or any aspect thereof); and  
10 summarizes the reasons the Parties are proposing the Settlement.

11 Further, for those Class Members who wish to participate in the Settlement and  
12 be eligible to receive a distribution from the Net Settlement Fund, the Notice and the  
13 Proof of Claim that will accompany it provide detailed instructions on the process for  
14 completing and submitting a Proof of Claim and the name and mailing address for the  
15 Claims Administrator. The Summary Notice also informs Class Members that copies  
16 of the Notice and Proof of Claim may be obtained by contacting the Claims  
17 Administrator, or by accessing the documents on the settlement website,  
18 [www.countrywidembssettlement.com](http://www.countrywidembssettlement.com) or Plaintiffs' Counsel's websites.

19 Finally, the Notice sets forth the date, time and place of the final approval  
20 hearing, along with the deadlines and procedures for requesting exclusion from the  
21 Class and objecting to the Settlement and includes the postal addresses for the Court,  
22 Plaintiffs' Counsel, and counsel for Defendants.

## 23 **VII. PROPOSED SCHEDULE OF EVENTS**

24 In connection with preliminary approval of the Settlement, the Court must set a  
25 final approval hearing date, as well as dates for mailing the Notice and publishing the  
26 Summary Notice and deadlines for requesting exclusion from the Class, objecting to  
27 the Settlement, submitting Proofs of Claim and filing papers in support of the  
28 Settlement. Plaintiffs propose the following schedule:

1	Substantial completion of mailing Notice and Proof of Claim to Class (“Notice Date”)	10 calendar days after entry of the Preliminary Approval Order
2		
3	Deadline for publishing the Summary Notice	7 calendar days after the Notice Date
4		
5	Deadline for requesting exclusion from the Class	45 calendar days after the Notice Date
6		
7	Deadline for filing initial papers in support of the Settlement, Plan of Allocation, and Plaintiffs’ Counsel’s request for an award of attorneys’ fees and expenses	35 calendar days before the Fairness Hearing
8		
9	Deadline for objecting to the Settlement, Plan of Allocation, and/or Plaintiffs’ Counsel’s request for an award of attorneys’ fees and expenses	21 calendar days before the Fairness Hearing
10		
11	Deadline for filing reply papers in support of the Settlement, Plan of Allocation, and Plaintiffs’ Counsel’s request for an award of attorneys’ fees and expenses	7 calendar days before the Fairness Hearing
12		
13		
14	Fairness Hearing	At the Court’s convenience
15	Deadline for submitting Proofs of Claim	120 calendar days after the Notice Date
16		

**VIII. CONCLUSION**

At this juncture, the Court is being asked to permit notice of the terms of the Settlement to be sent to the Class and to schedule a hearing to consider, among other things, any expressed views by Class Members concerning the fairness of the Settlement, the Plan of Allocation of settlement proceeds, and Plaintiffs’ Counsel’s request for an award of attorneys’ fees and expenses. For the reasons discussed herein, Plaintiffs respectfully request that the proposed Settlement be preliminarily approved by the Court and the Preliminary Approval Order entered.

1 DATED: June 25, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2013, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 25, 2013.

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## Mailing Information for a Case 2:10-cv-00302-MRP-MAN

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