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25 UNITED STATES DISTRICT COURT  
 26 CENTRAL DISTRICT OF CALIFORNIA

27 MAINE STATE RETIREMENT ) No. 2:10-cv-00302-MRP(MANx)  
 28 SYSTEM, Individually and On Behalf )



1	WESTERN CONFERENCE OF	)	No. 2:12-cv-05122-MRP(MANx)
	TEAMSTERS PENSION TRUST	)	
2	FUND, Individually and On Behalf of	)	<u>CLASS ACTION</u>
3	All Others Similarly Situated,	)	
4		)	
	Plaintiff,	)	
5		)	
	vs.	)	
6		)	
7	COUNTRYWIDE FINANCIAL	)	
	CORPORATION, et al.,	)	
8		)	
	Defendants.	)	No. 2:12-cv-05125-MRP(MANx)
9		)	
	_____		<u>CLASS ACTION</u>
10	DAVID H. LUTHER, et al.,	)	
	Individually and On Behalf of All	)	
11	Others Similarly Situated,	)	
12		)	
	Plaintiffs,	)	
13		)	
	vs.	)	
14		)	
15	COUNTRYWIDE FINANCIAL	)	
	CORPORATION, et al.,	)	
16		)	
	Defendants.	)	
17		)	
18	_____		
19		)	
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1 I, Ed Kommers, declare as follows:

2 1. I am the Chairman of the Board of Trustees for the Washington State  
3 Plumbing and Pipefitting Pension Trust (“WSPPT”) a state court appointed co-lead  
4 plaintiff in the *Luther* litigation (the “*Luther* Action”).<sup>1</sup> I submit this Declaration on  
5 behalf of WSPPT. As Chairman of the Board of Trustees for WSPPT, I, along with  
6 the Board of Trustees, monitor and supervise securities-related litigation, such as the  
7 *Luther* Action, in which WSPPT is involved. In this capacity, I, along with the  
8 Board of Trustees, have monitored the *Luther* Action at all times since WSPPT’s  
9 entry into the case in June 2008.<sup>2</sup>

10 2. WSPPT is a Taft-Hartley pension fund representing four local unions  
11 across the state of Washington and has approximately \$570 million in assets under  
12 management. WSPPT is charged with making and overseeing investments for its  
13 pensioners.

14 3. WSPPT has served as a named plaintiff in other securities litigations  
15 and, thus, has experience in cases like the *Luther* Action. Given the size and  
16 importance of WSPPT’s investments to its pensioners, WSPPT has taken an  
17 interest in the integrity of the securities markets.

18 4. The Board of Trustees for WSPPT and I are aware of and understand  
19 the requirements and responsibilities of a representative plaintiff in a securities class

20 \_\_\_\_\_  
21 <sup>1</sup> Unless otherwise defined herein, capitalized terms have the meanings ascribed to  
22 them in the Stipulation and Agreement of Settlement (“Stipulation”), previously filed  
with the Court on July 9, 2013. *Luther* ECF 151.

23 <sup>2</sup> WSPPT was named as the plaintiff in the initial Class Action Complaint for  
24 Violation of §§11, 12 (A)(2) and 15 of the Securities Act of 1933 filed with the  
25 California Superior Court on June 12, 2008. By Stipulation and Order of  
26 Appointment of Lead Plaintiff and Co-Lead Counsel dated October 6, 2008, the  
27 California Superior Court appointed WSPPT as one of the co-lead plaintiffs in the  
state court action. By Order Granting Preliminary Approval to Settlement and  
Directing Dissemination of Notice to the Class dated August 7, 2013, the Court for the  
Actions appointed WSPPT as one of the class representatives for purposes of  
effectuating the Settlement.

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1 action including those set forth in the Private Securities Litigation Reform Act of  
2 1995. Throughout the course of this litigation, the Board of Trustees for WSPPPT and  
3 I have taken those duties and responsibilities seriously and executed them to the best  
4 of our abilities. On behalf of WSPPPT, I submit this Declaration in support of (a)  
5 Plaintiffs' Motion for Final Approval of the proposed \$500 million Settlement (the  
6 "Settlement") and Plan of Allocation and (b) Plaintiffs' Counsel's Motion for an  
7 Award of Attorneys' Fees and Expenses. I have personal knowledge of the matters  
8 set forth in this Declaration, based on my personal involvement in monitoring and  
9 overseeing both (a) the prosecution of the *Luther* Action and (b) the negotiations  
10 leading to the Settlement. I could and would testify competently to the matters set  
11 forth herein if called upon to do so.

12 **I. Work Performed by WSPPPT on Behalf of the Class**

13 5. In fulfillment of its responsibilities as a Lead Plaintiff, and on behalf of  
14 all Class Members, WSPPPT performed its role as a Lead Plaintiff in pursuit of a  
15 favorable result in the *Luther* Action.

16 6. Prior to being appointed as a Lead Plaintiff in the *Luther* Action, I, on  
17 behalf of WSPPPT, discussed with Darren Check, Esq. at Kessler Topaz Meltzer &  
18 Check, LLP (formerly, Barroway Topaz Kessler Meltzer & Check, LLP) ("KTMC")  
19 the responsibilities of serving as a Lead Plaintiff, WSPPPT's commitment to fulfilling  
20 these responsibilities, and the factual and legal bases for the claims that WSPPPT  
21 eventually asserted against Defendants.

22 7. Since being appointed as a Lead Plaintiff in October 2008 by the  
23 California Superior Court, WSPPPT has devoted substantial time in connection with  
24 its representation of the Class. On behalf of WSPPPT, I, the Board of Trustees for  
25 WSPPPT and other WSPPPT personnel have, among other things: (a) reviewed and  
26 approved pleadings filed in the *Luther* Action; (b) had extensive and regular meetings,  
27 telephone calls and email communications with Plaintiffs' Counsel (primarily through  
28 direct communications with Darren Check, Esq. and Andrew Zivitz, Esq. of KTMC)

1 regarding strategy and developments in the *Luther* Action; (c) kept fully informed  
2 regarding the status of the *Luther* Action in both state and federal court; (d) kept  
3 apprised of other MBS-litigation (including, but not limited to, the *Maine State* action)  
4 and rulings by district and appellate courts that bear on MBS-related issues; and (e)  
5 consulted with certain of Plaintiffs' Counsel during the course of their 6-month effort  
6 to mediate a successful settlement of all claims asserted in the Actions on behalf of the  
7 Class. I was personally involved in discussions concerning what WSPPT believed  
8 would be an appropriate range for settling the various claims asserted in the Actions  
9 and arriving at an equitable plan for allocating the settlement proceeds to the Class,  
10 and was responsible for obtaining and conveying appropriate authority from the Board  
11 of Trustees for WSPPT to Plaintiffs' Counsel with respect to the Settlement Amount  
12 and the proposed Plan of Allocation.

13 **II. WSPPT Strongly Endorses Approval of the Settlement by the**  
14 **Court**

15 8. Based on its involvement throughout the prosecution and resolution of  
16 the *Luther* Action, WSPPT approved the decisions to enter into the Settlement and to  
17 tier the Plan of Allocation. In this regard, I, along with the Board of Trustees,  
18 reviewed, analyzed and evaluated the merits of this case, and were kept apprised of  
19 the scheduling and progress of the case.

20 9. In making the determination that the \$500 million Settlement represented  
21 a fair, reasonable and adequate result for the Class, WSPPT did so with an  
22 appreciation of both the strengths and weaknesses of Plaintiffs' claims, including but  
23 not limited to (a) the hurdles Plaintiffs would have had to overcome in order to prove  
24 liability, (b) Defendants' arguments on loss causation and (c) Plaintiffs' difficulty in  
25 proving damages at trial. For example, WSPPT took into consideration the fact that  
26 Defendants repeatedly have argued that any losses suffered by Countrywide MBS  
27 investors were caused by the financial crisis rather than by any alleged misstatements  
28 by Defendants, thereby materially affecting Plaintiffs' recoverable damages.

1 WSPPPT also considered the varying rulings of district and appellate courts  
2 nationwide on the appropriate scope of standing and tolling.

3 10. WSPPPT also weighed the immediate benefits of resolving the claims  
4 asserted in the Actions now for a sum of \$500 million, versus the costs and  
5 uncertainties of further years' worth of protracted litigation and inevitable appeals —  
6 including the substantial risk that Plaintiffs and the Class would recover significantly  
7 less than \$500 million (or even nothing at all) had the Actions been litigated to the  
8 very end. In addition to the uncertainties associated with continued litigation  
9 generally as well as the risks unique to this litigation, I, along with the Board of  
10 Trustees, also considered the real possibility that Countrywide could declare  
11 bankruptcy before any judgment could be collected from this litigation.

12 11. Based on the absolute dollar size of the Settlement (which we've been  
13 advised constitutes the largest Securities Act MBS class action settlement to date) and  
14 the fact that the Settlement represents a remarkably large percentage of reasonably  
15 recoverable losses suffered by the live claim holders in this case (assuming that  
16 Plaintiffs prevailed on liability), WSPPPT believes that the Settlement represents an  
17 exceptional recovery for the Class in the face of substantial litigation risks.  
18 Accordingly, WSPPPT strongly recommends approval of the Settlement.

19 12. WSPPPT also participated in developing the proposed Plan of Allocation  
20 and, in doing so, considered the strengths and weaknesses of the claims held by all  
21 putative Class Members. WSPPPT believes the proposed Plan of Allocation is fair  
22 and reasonable as it balances the relative strength of the claims brought, without  
23 excluding any absent Class Members from the recovery, including those whose claims  
24 had been dismissed by the Court.

25 13. On behalf of WSPPPT, I commend the efforts of Plaintiffs' Counsel in  
26 all of the Actions for obtaining such a recovery for the benefit of the Class and their  
27 perseverance in prosecuting the *Luther* matter for nearly six years (and the *Maine*  
28 *State* matter for 3 ½ years), including after the case was dismissed by the California

1 Superior Court. Their work has been of an exceptionally high caliber, with a strong  
2 commitment to professionalism and diligence. Counsel for the *Luther* Plaintiffs have  
3 dutifully and effectively advocated for the interests of WSPPPT and the Class  
4 throughout the course of the *Luther* Action. I believe that without the skill and  
5 dedication of Plaintiffs' Counsel, this Settlement would not have been achieved.

6 **III. WSPPPT Supports Plaintiffs' Counsel's Motion for an Award of**  
7 **Attorneys' Fees and Expenses**

8 14. Prior to submitting their present fee and expense application, KTMC  
9 discussed with WSPPPT Plaintiffs' Counsel's intention to apply for an award of  
10 attorneys' fees not to exceed 17% of the Settlement Fund, as well as reimbursement of  
11 litigation expenses not to exceed \$4 million, subject to approval by the Court. The  
12 Board of Trustees and I understand this fee and expense request applies to all counsel  
13 in *Luther*, *Western Conference* and *Maine State*.

14 15. With respect to the reasonableness of Plaintiffs' Counsel's fee request,  
15 WSPPPT recognizes that any determination of fees is left to the discretion of the  
16 Court. In an attempt to aid the Court in that determination, WSPPPT provides the  
17 following based on its observations over the past six years and wishes to advise the  
18 Court that it fully supports Plaintiffs' Counsel's request for an award of attorneys'  
19 fees and reimbursement of litigation expenses. WSPPPT has evaluated Plaintiffs'  
20 Counsel's fee request by considering the work performed by Plaintiffs' Counsel over  
21 the past six years in the *Luther* Action, and by considering the substantial recovery  
22 obtained for the Class by counsel in *Luther*, *Western Conference* and *Maine State* in  
23 light of the substantial risks of litigation. In fact, after the California Superior Court  
24 dismissed the *Luther* Action in January 2010, WSPPPT believed the case to be over,  
25 and was impressed by Plaintiffs' Counsel's ability to convince the California Court of  
26 Appeal to reinstate the *Luther* case, which was one factor paving the way for the  
27 Settlement.

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1           16. In considering Plaintiffs' Counsel's 17% fee request, WSPPPT  
2 considered that the \$500 million recovery in the Actions represents the largest  
3 recovery ever in a MBS case brought under the Securities Act. Likewise, WSPPPT  
4 recognizes that the area of law governing MBS cases is unsettled, to say the least, and  
5 obtaining a \$500 million recovery given the prior rulings in this jurisdiction is an  
6 impressive result. WSPPPT also recognizes that Plaintiffs' Counsel took a risk in  
7 commencing this matter nearly six years ago and has shouldered the cost and expense  
8 of litigating it during that time without receiving any compensation. WSPPPT  
9 believes that the fee request properly compensates Plaintiffs' Counsel for their  
10 exhaustive efforts in all of the Actions.

11           17. In sum, WSPPPT is extremely pleased with the result obtained in all of  
12 the Actions and the work of Plaintiffs' Counsel in achieving this result. Based on the  
13 result obtained and the other factors discussed above, WSPPPT has endorsed  
14 Plaintiffs' Counsel's request for a fee award equal to 17% of the Settlement Fund, and  
15 believes that it reflects fair and reasonable compensation for Plaintiffs' Counsel on the  
16 facts of this case.

17           18. WSPPPT also has reviewed Plaintiffs' Counsel's request for  
18 reimbursement of litigation expenses and believes this request represents costs and  
19 expenses necessarily incurred in prosecuting and resolving the Actions. WSPPPT  
20 likewise endorses Plaintiffs' Counsel's expense request as fair and reasonable.


21           **IV. Conclusion**

22           19. For the foregoing reasons, WSPPPT respectfully requests that the Court  
23 approve in full (a) Plaintiffs' Motion for Final Approval of Class Action Settlement  
24 and Plan of Allocation and (b) Plaintiffs' Counsel's Motion for an Award of  
25 Attorneys' Fees and Expenses.

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1           20. I declare under penalty of perjury under the laws of the United States of  
2 America that that the foregoing is true and correct, and that I have authority to execute  
3 this Declaration on behalf of WSPPT.

4 Executed this 20 day of September, 2013

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7 Ed Kommers

8 *Chairman of the Board of Trustees for the*  
9 *Washington State Plumbing and Pipefitting*  
10 *Pension Trust*

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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 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 September 23, 2013.

s/ Spencer A. Burkholz  
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#### Manual Notice List

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