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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiff,

vs.

COUNTRYWIDE FINANCIAL  
CORPORATION, et al.,

Defendants.

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

CLASS ACTION

**DECLARATION OF  
NANCY GERTNER**

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

Plaintiff,

vs.

COUNTRYWIDE FINANCIAL  
CORPORATION, et al.,

Defendants.

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

CLASS ACTION

[Caption continued on following page.]

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

Plaintiffs,

vs.

COUNTRYWIDE FINANCIAL  
CORPORATION, et al.,

Defendants.

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

CLASS ACTION

1 I, Nancy Gertner hereby declare and state as follows:

2 I am a duly licensed attorney engaged by the Plaintiffs in these Actions<sup>1</sup> to  
3 serve as a neutral mediator. I submit this declaration in connection with final approval  
4 of the Plan of Allocation. I have personal knowledge of the statements herein and, if  
5 called as a witness, could competently testify thereto.

6 1. I served as a District Judge for the United States District Court for the  
7 District of Massachusetts from 1994 to September 2011 where I presided over  
8 thousands of complex actions during my tenure. Upon my retirement from the federal  
9 bench in September 2011, I joined the faculty at Harvard Law School where I teach a  
10 number of subjects including criminal law, criminal procedure, sentencing and law  
11 and forensic science. My curriculum vitae is attached as Exhibit A hereto. I also  
12 conduct mediations and arbitrations, mainly through Resolutions, LLC, a Boston,  
13 Massachusetts based mediation services firm that provides a full range of alternative  
14 dispute resolution services with expertise in the resolution of complex litigation,  
15 including securities class actions.

16 2. The *Maine State*, *Luther* and *Western Conference* Class Counsel asked  
17 me to help them arrive at a fair and equitable plan for allocating the proceeds of the  
18 \$500 million Settlement reached with Defendants in these Actions. As discussed  
19 below, in my opinion the agreed upon Plan of Allocation, set forth in the Notice and  
20 explained more extensively in Plaintiffs' Supplemental Plan of Allocation Submission  
21 filed on July 23, 2013, represents a well-reasoned, fair and equitable distribution of  
22 the Settlement Amount. While the Court will make a final determination as to the  
23 "fairness, adequacy and reasonableness" of the Settlement as a whole under applicable  
24 legal standards, from a neutral mediator's perspective, I unreservedly recommend the  
25 Plan of Allocation presented in the Notice because it appropriately reflects the relative  
26

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27 <sup>1</sup> Unless otherwise defined herein, capitalized terms have the meanings ascribed to them in the  
28 Stipulation and Agreement of Settlement ("Stipulation"), previously filed with the Court on July 9,  
2013. *Maine State* ECF 408, *Luther* ECF 151, and *Western Conference* ECF 132.

1 viability and strength of the claims that fall within each of the three delineated  
2 categories: certificates purchased by the named Plaintiffs that Plaintiffs believe are  
3 currently not subject to dismissal pursuant to the Court's Orders ("Category One");  
4 certificates purchased by Plaintiffs that sought to act as class representatives but had  
5 their claims dismissed or their claims were subject to dismissal by the Court's Orders  
6 ("Category Two"); and certificates for which claims were dismissed because no  
7 plaintiff with standing under the Court's rulings sought to act as a class representative  
8 ("Category Three").

9 3. Due to the complexity of the Actions and the number of Certificates  
10 encompassed by the Settlement, several possible allocation scenarios were presented  
11 by Class Counsel. On June 13, 2013, Plaintiffs made submissions to me setting forth  
12 potential plans of allocation and providing the legal and factual rationale behind their  
13 proposed allocations of the Settlement Amount.

14 4. On June 19, 2013, I conducted an in-person session with Plaintiffs in  
15 Boston, Massachusetts during which Class Counsel presented the legal justification  
16 for the potential plans of allocation and discussed the relative fairness and equitability  
17 of the plans.

18 5. During the June 19th session, I recommended that Plaintiffs agree to the  
19 Plan of Allocation currently set forth in the Notice. My recommendation was based  
20 on my evaluation of the legal support for this plan, as compared to other potential  
21 allocations, as well as the overall fairness and equitability of the plan. In evaluating  
22 the possible allocation schemes, I considered the Court's prior opinions in the  
23 Actions, the standing and tolling case law from other Courts of Appeals and the plans  
24 of allocation that have been adopted in other mortgage-backed securities class action  
25 settlements.

26 6. The agreed upon Plan of Allocation provides that the majority of the  
27 Settlement Amount (65% or \$325 million) be apportioned to the Category One  
28 tranches because the claims as to the 58 tranches within this category would likely

1 have been upheld at the pleading stage by the Court in the Luther action, based on the  
2 Court's prior standing and tolling rulings in the Maine State action. In fact, claims as  
3 to 8 of the 58 tranches were upheld in Maine State at the pleading stage. Because  
4 these 58 tranches were actually purchased by named Plaintiffs in the Actions and  
5 subjected Defendants to the greatest possibility of liability at trial, it is my opinion that  
6 these Category One tranches should be allocated the majority of the Settlement  
7 Amount.

8 7. The Plan of Allocation allocates \$125 million, or 25% of the Settlement  
9 Amount, to the 111 tranches in Category Two. The Category Two tranches are  
10 entitled to a smaller recovery than the first category because these tranches had  
11 previously been dismissed or would have been dismissed by the Court upon an  
12 application of the Court's prior rulings to the Luther and Western Conference actions.  
13 However, unlike the tranches in the third category, discussed below, the Category  
14 Two tranches were purchased by a named Plaintiff in the Actions. The tranches in  
15 this second category, therefore, would have relatively stronger claims on appeal and  
16 are thus entitled to a larger apportionment of the Settlement Amount. If, for example,  
17 the Court of Appeals for the Ninth Circuit overturned the Court's standing ruling on  
18 appeal, the Court nonetheless could hold at the class certification stage that only those  
19 tranches which were purchased by named Plaintiffs in the Actions could validly be  
20 included in a certified class. In my opinion, the ability of the claims within this  
21 second category to withstand such a decision militates in favor of allocating a larger  
22 portion of the Settlement Amount to the Category Two tranches when compared to the  
23 third category.

24 8. The Plan of Allocation allocates \$50 million or 10% of the Settlement  
25 Amount to the tranches in Category Three. Claims based on these tranches previously  
26 have been dismissed by the Court on both standing and tolling grounds. In addition,  
27 none of these tranches were purchased by any of the named Plaintiffs in the Actions.  
28 Therefore, in my opinion, the claims based on these Category Three tranches do not

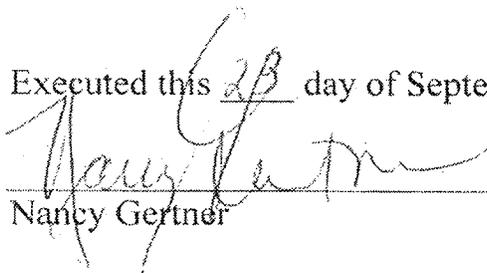
1 have as strong appellate rights as do the represented tranches and are thus entitled to a  
2 lesser recovery than the claims based on the tranches within the First and Second  
3 Categories.

4 9. Throughout my dealings with Class Counsel, they at all times were  
5 focused on the fairness to all members of the class in all three categories of tranches. I  
6 spent considerable time discussing with class counsel what a fair and reasonable  
7 allocation of the settlement funds to purchasers of these tranches would be. I believe  
8 that providing the Category Three tranches with an allocation of \$50 million is an  
9 excellent recovery for these purchasers given the Court's standing rulings and the  
10 relative strength of their potential appeal rights. In my view, the named Class  
11 Plaintiffs and Class Counsel vigorously represented the interests of all Class  
12 Members, including those in Category Three, while mindful of the differences in the  
13 relative strength of their appellate rights and the current value of their claims under  
14 Judge Pfaelzer's rulings as to standing and timeliness.

15 10. In sum, it is my view that the Plan of Allocation, as set forth in the  
16 Notice, represents a fair and equitable distribution of the Settlement Amount and has  
17 support in the case law. I am also of the view that the Plan of Allocation was agreed  
18 upon following vigorous and well-reasoned discussions between Class Counsel,  
19 involving their clients.

20 11. I declare under penalty of perjury under the law of the United States of  
21 America that the foregoing is true and correct.

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23 Executed this 23 day of September, 2013

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25 Nancy Gertner  
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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  
SPENCER A. BURKHOLZ  
  
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#### Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)