No. 12-57299

United States Court Of Appeals
for the Ninth Circuit

FEDERAL DEPOSIT INSURANCE CORPORATION, as receiver for STRATEGIC CAPITAL BANK,

*Plaintiff-Appellant,*

– v. –

COUNTRYWIDE FINANCIAL CORP.; COUNTRYWIDE SECURITIES CORP.; CWALT, INC.; BANK OF AMERICA CORP.; and CITIGROUP GLOBAL MARKETS, INC.,

*Defendants-Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

**BRIEF OF THE SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS-APPELLEES AND IN SUPPORT OF AFFIRMANCE**

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## **RULE 26.1 CORPORATE DISCLOSURE STATEMENT**

*Amicus curiae* the Securities Industry and Financial Markets Association states that it is not a subsidiary of another corporation, and no publicly held corporation owns more than 10% of its stock.

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## STATEMENT OF INTEREST OF THE *AMICUS CURIAE*

The Securities Industry and Financial Markets Association ("SIFMA") is an association comprised of hundreds of member securities firms, banks and asset managers.[1] SIFMA's members include the principal securities firms and banks involved in the underwriting of securities of United States issuers, as well as asset managers involved in the purchase of securities in United States issuances. As such, its members frequently are involved in, and are targets of, securities class action litigation. As an organization, SIFMA has interests in fostering certainty and efficiency, as well as fairness, in the capital-raising process. Those interests are furthered by rules, such as Section 13 of the Securities Act, that require purchasers in public offerings to prosecute claims promptly if they were damaged by a misstatement or omission in an offering document, and provide repose to the participants in public offerings if claims are not promptly prosecuted. They are also furthered by the establishment of clear rules regarding the actions that must be taken to preserve a claim and the time after which a participant is not

[1] SIFMA hereby certifies that no counsel for a party authored this brief in whole or in part; no party or counsel for a party contributed money that was intended to fund preparation or submission of this brief; and no person other than the *amicus curiae*, its members, and its counsel, contributed money that was intended to fund preparation or submission of this brief. All parties have consented to the filing of this brief.

required to defend itself from stale claims.  SIFMA routinely appears as *amicus curiae* in appeals that implicate these concerns.

Whether the filing of a putative class action lawsuit by purchasers in one offering can toll the statute of limitations for purchasers in another raises an issue important to the administration of the federal securities laws and to Rule 23. The positions advocated by Appellant would undermine principles that support the effective and efficient functioning of the securities markets, increase the costs and risks of capital formation, invite the filing of overbroad lawsuits, and leave to the pens of plaintiffs and their counsel—rather than Congress—the time periods in which market participants are subject to litigation under the securities laws.

## PRELIMINARY STATEMENT

This appeal raises two questions critical to the securities industry and the market as a whole:  (1) whether the filing of a class action lawsuit by a plaintiff who lacks standing to prosecute a claim tolls the statute of limitations for purchasers of other securities—a group whose membership does not include the named plaintiff—under the *American Pipe* tolling doctrine; and (2) whether plaintiffs who purchased one security and therefore may themselves obtain recovery only based upon a wrong with respect to the sale of such security nonetheless possess standing to assert claims on behalf of persons who purchased other securities.  SIFMA—whose members are frequent targets of securities litigation who experience first-hand the dramatic costs imposed by the sweeping rules advocated by Appellant—respectfully submits that the answer to both questions is (and should be) "no."

*First*, tolling claims that named plaintiffs lacked standing to assert would be inconsistent with *American Pipe* and breed abuse in securities litigation. *American Pipe* held that the filing of a class action by named plaintiffs with standing would toll the statute of limitations as to persons who would have been parties had a class been certified under Rule 23. Because the decision whether to grant class certification rests in the district court's discretion and is frequently determined by facts that only appear after the filing of a complaint, any contrary rule would have led to "needless" and "duplicat[ive]" filings by persons who would opt to remain part of the class if the court were to exercise that discretion in favor of certification but who are forced to file claims for fear the court will choose not to so exercise its discretion. When the named plaintiffs lack standing, by contrast, the filings by the absent class members are not "needless"—they will ultimately be needed if a claim is to be prosecuted—and the question whether the named plaintiff has standing is a matter of law. Indeed, in the absence of standing, there is no "case" and therefore no Article III power for pleadings filed in that case to affect substantive rights. Moreover, tolling in the absence of standing would invite abuse in securities litigation, incentivizing plaintiffs to file placeholder cases for claims the named plaintiffs lack standing to prosecute, in the hope of belatedly finding investors who might agree to champion those claims—thereby dramatically increasing the costs of the capital-raising process.

*Second*, named plaintiffs who did not invest in a security are not injured in connection with the sale of that security and therefore lack standing to assert claims on behalf of persons who did purchase that security. This conclusion is compelled by Article III principles and controlling precedent, as well as the text and purposes of the securities laws. Appellant's contrary rule—which would permit named plaintiffs (and their lawyers) to purport to seize claims in which they have no cognizable interest and wield them in litigation—would discourage plaintiffs with standing from stepping forward on a timely basis, foster the very abusive, lawyer-driven litigation that Congress attempted to prevent with the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), exponentially increase the size and costs of securities litigation, and intensify the hydraulic pressure on defendants to settle such litigation regardless of the merits, to the detriment of the investing public and the national economy. Appellant's rule would also increase uncertainty concerning the scope of securities class actions, delaying the resolution of such litigation and discouraging participation in the capital formation process—at considerable expense to defendants, their shareholders, and the judicial and financial systems.

## ARGUMENT

### I. CLASS ACTION CLAIMS ASSERTED BY PLAINTIFFS WITHOUT STANDING DO NOT TOLL ABSENT CLASS MEMBERS' CLAIMS

#### A. Tolling in the Absence of Standing Would Be Inconsistent With *American Pipe*

The District Court held that "*American Pipe* tolling applies only to Countrywide MBS for which the named plaintiffs in the prior putative class actions had standing to sue." ER20. That ruling was correct and is supported by both the language and the logic of *American Pipe* itself.

*American Pipe* held that when "a named plaintiff who is found to be representative of a class commences a suit," the filing of the class action "suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action." 414 U.S. at 554-55. The Court went out of its way to emphasize that the named plaintiff in *American Pipe* had claims that were "typical of the claims . . . of the class and would fairly and adequately protect the interests of the class," and that class certification was denied based on Rule 23 factors and not for "lack of standing of the representative." *Id.* at 550-51, 553-55. Indeed, the concurrence explicitly noted that tolling "must not be regarded as encouragement to lawyers in a case of this kind to frame their pleadings as a class action, intentionally, to attract and save members of the purported class who have slept on their rights." *Id.* at 561

(Blackmun, J., concurring). It would be entirely inconsistent with *American Pipe* itself to hold that the tolling rule applies not only when a named plaintiff with standing files a class action complaint but also when a plaintiff without standing files such a complaint.

Not only is the language of *American Pipe* inconsistent with its application in a case where the named plaintiff lacks standing, but so too is its logic. The *American Pipe* Court based its ruling on the fact that the named plaintiff had standing and was representative of the putative class and that class certification was denied only on the basis of the discretionary application of Rule 23 principles. That ruling, and the rule established by the Court, makes sense in the context of Rule 23. The decision whether or not to certify a class under Rule 23 is committed to the district court's discretion and may be based on facts that arise after the filing of the complaint. It is not a matter of law, reviewed de novo. *See, e.g., Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d 1087, 1090 (9th Cir. 2010) (applying abuse of discretion standard of review to class certification decision and stating "the ultimate decision as to whether or not to certify the class, must, at least in any non-frivolous putative class action, involve a significant element of discretion"). Different courts can come to different results on precisely the same facts. *See N.J. Carpenters Health Fund v. RALI Series 2006-Q01 Trust,* 477 Fed. App'x 809, 814 (2d Cir. 2012) (summary order) (noting that different judges have reached different certification decisions in MBS actions and stating "both grants and denials of certification in MBS litigation may fall within the range of a district court's discretion"). No putative class member can determine for certain in advance whether the Court will decide, for example, that the class is sufficiently numerous that joinder of all members is impracticable or that a class action is superior to all other methods for fairly and efficiently adjudicating the controversy.

It thus makes sense that the filing of a putative class action by a party with standing would suspend the running of the statute of limitations until the court—in its discretion—determined whether Rule 23 was satisfied. For the Court to have held otherwise would have required absent plaintiffs to take an "extraordinary" action inimical to and "[in]consistent with federal class action procedure": filing separate lawsuits or motions for intervention that—in the event the class was certified—would have been wholly unnecessary. 414 U.S. at 554; *see also Credit Suisse Sec. (USA) LLC v. Simmonds*, 132 S. Ct. 1414, 1419 (2012) ("a litigant seeking equitable tolling" must establish "that he has been pursuing his rights diligently, and . . . some extraordinary circumstances stood in his way").

By contrast, unlike class certification, standing is a "threshold *jurisdictional* question" that is decided as a matter of law. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102 (1998) (emphasis added). There is no extraordinary obstacle preventing an absent class member from determining that a named plaintiff who purports to represent him lacks standing. The absent class member can exercise the same judgment that all persons are required to do when determining their rights; in most instances, that determination can be made from the face of the complaint, which in PSLRA cases must include a certification of the named plaintiff's purchases and sales and is publicized nationwide. *See* 15 U.S.C. § 77z-1(a). If there are any questions about standing, the PSLRA encourages those questions to be raised early and publicly. *Id.* If no PSLRA certification is filed or there appears to be a standing defect, there is no obstacle to a putative class member contacting the named plaintiff and asking about her standing and making its own legal judgment, or filing his own motion to be lead plaintiff. And, if—in the face of such questions—the absent class member files a competing motion or opt-out action, that is not an action that is to be decried. It is precisely the objective that the law encourages. *Id.*; *see also In re Netflix, Inc. Sec. Litig.*, 2012 WL 1496171, at *5 (N.D. Cal. Apr. 27, 2012) (considering standing during lead plaintiff appointment).

Standing also goes to the power of the tribunal. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co.*, 523 U.S. at 94. A suit brought by named plaintiffs without standing is therefore not a juridical case, and can have no legal effect. *See Walters v. Edgar*, 163 F.3d 430, 432-33 (7th Cir. 1998) (Posner, J.) (where class plaintiffs "never had standing to bring this suit . . . federal jurisdiction never attached" and "there was no case" for absent plaintiffs to join).[2] As compelled by this principle, a class action whose named plaintiffs lack standing to assert certain claims does not toll the limitations periods for those claims. Appellant's contrary argument confers power on a pleading to affect substantive rights—even where the court in which it is filed has no power to adjudicate that claim because the plaintiff has no standing to pursue it.

### B. Tolling in the Absence of Standing Would Breed Abuse in Securities Litigation

Applying tolling where named plaintiffs lack standing would also breed securities litigation abuse, by encouraging persons who are not part of the class (more pointedly, their attorneys) to assert the broadest possible claims so as to preserve them for others. *See Cunningham v. Ins. Co. of N. Am.*, 530 A.2d 407, 410 (Pa. 1987). This would exacerbate a problem that is already of dramatic proportions. The stakes at issue in securities litigation, including litigation concerning MBS offerings in particular, are staggering. Financial institutions,

[2] There is a similar lack of judicial power over *claims* that the named plaintiffs lack standing to assert. *See Police & Fire Ret. Sys. of Detroit v. IndyMac MBS, Inc.*, 721 F.3d 95, 111 (2d Cir. 2013). Thus, judicial power cannot be conferred over a claim asserted by a plaintiff who only has standing to bring *other* claims.

including those with only limited involvement in the mortgage market, have faced—and continue to face—scores of lawsuits concerning MBS offerings worth tens or hundreds of billions of dollars. Creating a perverse incentive for class plaintiffs and their lawyers to assert even broader claims would therefore unfairly enhance a class action's settlement value by artificially increasing its *in terrorem* leverage—a concern that is particularly acute in securities cases, where class actions "present[] a danger of vexatiousness different in degree and in kind from that which accompanies litigation in general." *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 80 (2006).

At the same time that it would increase the scope and costs of securities class actions, tolling in the absence of standing would also delay the filing of individual actions —which are typically brought by institutional investors with large amounts at stake, *see* Amir Rozen et al., Cornerstone Research, *Opt-Out Cases in Securities Class Action Settlements*, at 3 (Nov. 19, 2013)—even though the claims of the plaintiffs in those actions could never be represented by the named plaintiffs in the class action. These individual investors could bide their time through class certification, and wait to file their individual actions until doing so would impose the highest costs on defendants, thereby increasing the settlement leverage of their individual actions, which already can impose significant liability on top of the class action even without that additional leverage. *Id.* at 2-4; *see also*

John C. Coffee, Jr., *Litigation Governance: Taking Accountability Seriously*, 110 Colum. L. Rev. 288, 311-13 (2010).

Tolling in the absence of standing would therefore increase potential liability in both class and individual actions, imposing a significant burden on the capital formation process.

## II. NAMED PLAINTIFFS LACK STANDING TO PROSECUTE CLAIMS CONCERNING SECURITIES THEY DID NOT PURCHASE

### A. Under Article III, Named Plaintiffs Do Not Have Standing To Assert Claims With Respect To Securities They Did Not Purchase

Appellant argues that, even if *American Pipe* tolling were limited to cases filed by plaintiffs with standing, the District Court erred because, having purchased securities in one or more than one Countrywide MBS offering, the named plaintiffs in the Countrywide MBS class actions had "class standing" to represent and bring a claim on behalf of purchasers in every other tranche of every other MBS offering. *See* Appellant's Br. at 56-58. It contends that the Second Circuit's decision in *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145, 164 (2d Cir. 2012), supports that unusual proposition. That argument runs roughshod over Article III principles and is fundamentally inconsistent with the purposes and functioning of the federal securities laws.

Appellant argues that "Article III standing is satisfied for a class action where at least one named plaintiff has standing to assert its claim," and “[a]ny other defect” concerning the scope of the class is “properly considered under Rule 23 . . . on a motion for class certification.” Appellant’s Br. at 53-55.[3] However, Appellant’s proposed rule is irreconcilable with the Supreme Court’s decision in *Lewis v. Casey*, 518 U.S. 343 (1996), which held that named plaintiffs who suffered injuries from one type of conduct (and who possessed standing to challenge that conduct) nonetheless lacked *standing* to assert claims on behalf of persons injured by other conduct, regardless of class certification considerations, because “[t]he standing determination is quite separate from certification of the class.” *Id.* at 358 & n.6. In reaching this conclusion, *Lewis* directly rejected the dissent’s contention (identical to Appellant’s here) that the named plaintiffs’ injuries were “sufficient to satisfy any constitutional standing concerns,” because “standing is not dispensed in gross.” *Id.*

It is likewise not relevant if there are similarities between the securities purchased by the named plaintiffs and others—as Appellant contends, Appellant’s Br. at 57-58—because “a plaintiff who has been subject to injurious conduct of one kind [does not] possess[] by virtue of that injury the necessary stake

[3] Appellant’s position is inconsistent with *NECA*, which dismissed certain claims on standing grounds prior to class certification. 693 F.3d at 163-64.

in litigating conduct of another kind, although similar, to which he has not been subject." *Blum v. Yaretsky*, 457 U.S. 991, 999 (1982).[4]

The MBS cases are illustrative of these general principles. In those cases, each security is backed by mortgages with different characteristics—often issued at different times by different originators or pursuant to different underwriting standards, and described in separate offering documents. An investor in a security backed by one set of loans therefore lacks a cognizable interest in challenging disclosures concerning other securities backed by different loans. For example, a plaintiff who invested in a security backed by fixed rate, prime mortgages issued in 2005 simply has no valid interest in whether there were misstatements made in connection with a different security backed, for example, by adjustable-rate, subprime mortgages issued in 2007, even if the same originator issued all of the mortgages and both certificates were sold by the same underwriters. This conclusion is borne out by experience in MBS litigation, where plaintiffs routinely attempt to establish wrongdoing by analyzing the specific loans underlying the securities at issue. *See In re Wash. Mut. Mortg.-Backed Sec. Litig.*, 2012 WL 2995046, at *4 (W.D. Wash. July 23, 2012).

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4 *See also Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2550 (2011) (class actions are only appropriate where the class representations "possess the *same* interest and suffer the *same* injury as the class members") (emphases added).

**B. <u>The Second Circuit Standard Will Also Breed Uncertainty That Will Impede the Capital-Raising Process</u>**

In arguing that a person who did not purchase a security and would not have individual standing to bring a claim with respect to misrepresentations regarding that security nonetheless does have standing to assert claims on behalf of others, Appellant relies primarily on the Second Circuit's decision in *NECA*. In that case, the court held that whether a named plaintiff has standing to assert claims on behalf of others that he does not have standing to assert on behalf of himself turns on whether the two sets of claims rest on a "sufficiently similar set of concerns" or on "fundamentally different set of concerns" or, in other words, whether the injuries and proof with respect to the two sets of claims would be "very different." 693 F.3d at 163-64. For the reasons stated by Countrywide, SIFMA agrees that the District Court properly rejected that holding as inconsistent with the law of the Supreme Court and this Circuit. In addition, the rule advocated by Appellant would also disserve the clarity embodied in the Securities Act and that is critical to the efficiency of the capital-raising process.

The Supreme Court has emphasized over and over again that securities litigation is "an area that demands certainty and predictability." *Pinter v. Dahl*, 486 U.S. 622, 652 (1988). "[A] shifting and highly fact-oriented disposition . . . is not a satisfactory basis for a rule of liability imposed on the conduct of business transactions." *Cent. Bank of Denver, N.A. v. First Interstate Bank of*

*Denver, N.A.*, 511 U.S. 164, 188 (1994); *see also Va. Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1105 (1991). Nowhere are those principles more important than with respect to the Securities Act. The provisions of Sections 11 and 12(a)(2) of the Securities Act are "notable both for the limitations on their scope as well as the *in terrorem* nature of the liability they create." *NECA*, 693 F.3d at 156. As the *NECA* Court noted, Section 11 "imposes strict liability on issuers and signatories, and negligence liability on underwriters. . . . Neither scienter, reliance, nor loss causation is an element of § 11." *Id.* Accordingly, the Securities Act contains several limitations that narrowly circumscribe its scope. *See Krim v. pcOrder.com, Inc.*, 402 F.3d 489, 495 (5th Cir. 2005). Among these limitations is that Section 11 limits plaintiffs to "any person acquiring such security," 15 U.S.C. § 77k(a), that Section 12(a)(2) is likewise limited to "the person purchasing such security," 15 U.S.C. § 77l(a), and that both Section 11 and Section 12(a)(2) require claims to be brought "one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence" and "[i]n no event . . . more than three years after the security was bona fide offered" or sold. 15 U.S.C. § 77m. The rules thus encourage—and permit—issuers and underwriters, in deciding whether to conduct (or participate in) a particular securities offering, to make a careful assessment of the potential risks associated with that offering, including potential liability for violations of the securities laws. A person subject to Section 11 can assess in connection with each underwriting or offering decision the size of the offering, the exposure to which the participant is subjecting itself, and the likelihood that a claim will be brought within the three-year period.

Unlike the language of the Securities Act which is clear and relatively easy to apply, the "sufficiently similar set of concerns" standard of *NECA* is fundamentally indeterminate. No case law or statutory or regulatory standard exists to tell a court or issuers and underwriters—or even purchasers for that matter—what similarities would make two different claims based on two different offerings "sufficiently similar" or what differences in those two different offerings would make two sets of claims "very different." *NECA*, 693 F.3d at 162-63 (whether conduct "implicates the same set of concerns . . . is much harder to answer"). An issuer or underwriter would have to guess. And there would be no basis for an issuer or underwriter to make that assessment in advance—before the participant even knows what representations a putative plaintiff will challenge and which representations it will not challenge. The ensuing uncertainty—whether viewed *ex ante* at the time of the underwriting decision or *ex post* at the time of the lawsuit—can only chill the underwriting and capital formation process and upset the careful balance that Congress struck in creating these causes of action.

### C. **Allowing Named Plaintiffs to Assert Class Claims Concerning Securities They Did Not Purchase Will Foster Overbroad Class Actions and Frustrate the Purposes of the PSLRA**

Permitting a plaintiff who did not purchase a security and who was not injured in connection with the offering of that security nonetheless to assert a claim based on misstatements made regarding that security also would be anathema to Congress's purposes in passing the PSLRA. The PSLRA was designed to reduce "abuses of the class-action vehicle in litigation involving . . . securities," *Dabit*, 547 U.S. at 81, "to curb . . . lawyer-driven litigation" by empowering interested investors to direct securities class actions, *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 320-22 (2007), and to decrease the pressure on defendants "to settle even unlikely or frivolous claims" in order to avoid the potentially astronomical costs of discovery and litigation. *In re Bos. Scientific Corp. Sec. Litig.*, 686 F.3d 21, 30 (1st Cir. 2012). In contrast to the District Court's holding, which would further each of these purposes, Appellant's proposed rule would exacerbate the very concerns that led Congress to enact the PSLRA in the first place.

First, it would encourage plaintiffs' lawyers to draft complaints to assert the broadest possible classes in direct contravention of the concern expressed in the *American Pipe* concurrence, and would permit class actions where named plaintiffs only possess an interest in a small number of the securities at issue.

Limiting class actions to the securities purchased by named plaintiffs ensures that there is at least one interested investor involved in the litigation with respect to each security at issue. By contrast, where a named plaintiff asserts claims over which it does not have standing itself, only the plaintiffs' lawyers would have an interest in pursuing claims—inviting the very lawyer-driven litigation that the PSLRA was meant to suppress.[5]

Second, it would exponentially increase the size of securities class actions and would allow plaintiffs' lawyers to pursue even unrelated claims through discovery—further intensifying the pressure on defendants to settle such litigation regardless of the merits. The securities markets increasingly rely on the shelf registration process for the efficient issuance of securities offerings over time. Appellant's proposed rule would permit—and even encourage—a named plaintiff who invested in only a limited number of those offerings to bring class claims concerning all of the offerings issued pursuant to the common shelf registration statement, even those that were issued at significantly different periods of time and in light of different economic circumstances, so long as those offerings were issued by the same defendants.

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[5] Notably, there is little burden on an investor to serve as a named plaintiff in securities class actions—*Hevesi v. Citigroup Inc.*, 366 F.3d 70, 82-83 (2d Cir. 2004) (named plaintiffs need not "satisf[y] the rigors of the PSLRA's lead plaintiff scrutiny")—so the unwillingness of a single investor in a security to serve as a named plaintiff speaks volumes about the merits of the asserted claim.

The potential consequences of Appellant's proposed rule would be staggering for the financial markets. The initial decisions applying *NECA* show the dramatic effect that Appellant's proposed rule would have on securities litigation: those decisions have added back dozens of securities worth tens of billions of dollars that were previously dismissed on standing grounds.[6] By dramatically increasing the scope of potential liability for financial institutions, Appellant's position and *NECA* would therefore discourage the very capital-raising process that the securities laws are intended to foster.

## CONCLUSION

For the foregoing reasons, SIFMA respectfully submits that the decision of the District Court should be affirmed.

Dated: New York, N.Y.
December 16, 2013

Respectfully submitted,

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6 *See, e.g., In re IndyMac Mortg.-Backed Sec. Litig.*, 2013 U.S. Dist. LEXIS 103576 (S.D.N.Y. July 23, 2013) (reinstating securities from 42 offerings originally worth more than $20 billion); *N.J. Carpenters Health Fund v. Residential Capital, LLC*, 2013 WL 1809767 (S.D.N.Y. Apr. 30, 2013) (reinstating securities from 49 offerings originally worth more than $40 billion).

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*/s/ Lewis J. Liman*
Lewis J. Liman

Dated: December 16, 2013

9th Circuit Case Number(s) 12-57299

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