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13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

15 IN RE WELLS FARGO MORTGAGE-
 16 BACKED CERTIFICATES
 LITIGATION

Civil Action No. 09-cv-01376-LHK

CONSOLIDATED CLASS ACTION - ECF

**REPLY IN FURTHER SUPPORT OF LEAD
 PLAINTIFFS' MOTION FOR CLASS
 CERTIFICATION**

Judge: Hon. Lucy H. Koh

Date: June 23, 2011

Time: 2:00 p.m.

Courtroom: 4, 5th Floor

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7 *In re Data Access Sys. Sec. Litig.*,
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Knapp v. Gomez,
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1 **I. PRELIMINARY STATEMENT**

2 As established in Lead Plaintiffs' opening brief, this securities class action is well-suited for
 3 class treatment under Rule 23(a) and (b)(3). Lead Plaintiffs' claims are typical of a Class of over 3,200
 4 investors, and common questions of law and fact predominate over individual ones.¹ Specifically, Lead
 5 Plaintiffs and the Class assert the *same* Section 11 claims against the *same* Defendants based on the
 6 *same* misstatements and omissions contained in virtually the *same* Offering Documents. The Lead
 7 Plaintiffs are clearly adequate. Each is knowledgeable about the case and has supervised counsel
 8 throughout this litigation. A class action is superior to alternative methods of resolving this dispute.
 9 Under such circumstances, Ninth Circuit law plainly requires class certification.

10 Indeed, "[t]he Ninth Circuit favors a liberal use of class actions to enforce federal securities
 11 laws." See Mot. at 9-10 (citing, *inter alia*, *Yamner v. Boich*, 1994 U.S. Dist. LEXIS 20849, at *6 (N.D.
 12 Cal. Sept. 15, 1994)). This is particularly true where, as here, the claims arise under Section 11 of the
 13 Securities Act of 1933 ("Securities Act") because the singular focus of such cases is whether there is a
 14 misrepresentation in the Offering Documents. *Id.* (citing cases). As the Honorable Marilyn Patel
 15 observed, "[c]ertification of a plaintiff class is *the rule* in this district in cases such as the instant one
 16 where the securities fraud alleged concerns misrepresentations or omissions in offering materials issued
 17 prior to a public offering." *In re Activision Sec. Litig.*, 621 F. Supp. 415, 428 (N.D. Cal. 1985).²

18 In their Opposition, Defendants do not identify a single case within the Ninth Circuit denying a
 19 motion to certify a class asserting claims under the Securities Act. Rather, relying on one out-of-circuit
 20 district court case, Defendants claim that individual issues predominate because, according to
 21 Defendants' speculation, investors purportedly knew of the misstatements prior to purchasing the
 22 Certificates. See *N.J. Carpenters Health Fund v. Residential Capital, LLC*, 272 F.R.D. 160 (S.D.N.Y.
 23 2011) ("*Residential Cap.*"). This out-of-circuit decision was recently rejected by a court within this
 24 Circuit as "*not well reasoned*" and "run[ning] *contrary to Ninth Circuit law* which defers questions
 25 about non-reliance to trial." *In re Wash. Mut. Mortg. Backed Sec. Litig.*, 2011 WL 1789975, at *2
 26

27 ¹ Defendants do not challenge that the Class of over 3,200 investors satisfies Rule 23(a)'s requirements
 28 of numerosity and commonality.

² Emphasis has been added unless otherwise noted.

(W.D. Wash. May 9, 2011) (“*WaMu RMBS*”) (“plac[ing] *no* reliance on *Residential Cap.*”). Moreover, the record is devoid of any evidence that any class member knew of the untrue statements and omissions in the Offering Documents before purchase. To the contrary, Defendants have admitted that

Likewise, Defendants’ expert confirmed that

Defendants also manufacture individualized questions and intra-class conflicts where none exist. For example, Defendants summarily contend that differences in the timing of investors’ purchases, the wording of the Offering Documents, and the underlying composition of the tranches and loan pools securitized in the Offerings create individualized issues that will predominate. Not so. The predominate question is whether the Offering Documents for each offering contained an untrue statement or material omission. Many additional issues are common, including issues related to Wells Fargo Bank, N.A.’s control person liability, as well as affirmative defenses based on purported public information such as statute of limitations and negative causation. Both sides’ experts agree,

In sum, this case, with more than 3,200 investors who have strict liability Securities Act claims against the same Defendants arising from the untrue statements and omissions in Wells Fargo’s Offering Documents, is ideally suited for class treatment.

II. ARGUMENT

A. Lead Plaintiffs Satisfy The Requirements Of Rule 23(b)(3)

1. Common Questions Of Law And Fact Predominate

“The Ninth Circuit has repeatedly found that common issues predominate in federal securities actions where the proposed class members have all been injured by the same alleged course of conduct.

³ Wells Fargo Defendants’ Amended Response To Second Set Of Interrogatories (Interrogatory No. 7), at 3:15-19, Ex. 23. Exhibits 23-30 referenced herein are attached to the June 2, 2011 Declaration of Timothy A. DeLange (the “DeLange Decl.”) submitted concurrently herewith. Exhibits 1-22 are attached to the February 11, 2011 Declaration of David R. Stickney [ECF No. 349] submitted in support of the Motion For Class Certification (the “Motion” or “Mot.”).

⁴ See Deposition Transcript of Stephen D. Prowse, Ph.D., CFA (“Prowse Tr.”), Ex. 24 at 52:18-23; 58:14-59:4.

⁵ See Expert Report of Joseph R. Mason, Ph.D., (“Mason Report”), Ex. 1 at ¶¶6, 63-68; Deposition Transcript of Bradford Cornell, Ph.D. (“Cornell Tr.”), Ex. 25 at 157:10-20.

(citation omitted). The existence of some individual issues concerning damages or reliance will not defeat class treatment in such a case.” See Mot. at 18-20 (citing, *inter alia*, *In re First Capital Holdings Corp. Fin. Prods. Sec. Litig.*, 1993 WL 144861, at *6 (C.D. Cal. Feb. 23, 1993)); see also *In re Pilgrim Sec. Litig.*, 1996 WL 742448, at *4 (C.D. Cal. Jan. 23, 1996) (class certified where complaint “alleged course of fraudulent conduct” consisting of misrepresentations in offering materials about the “contents of the Trusts’ portfolios, their illiquidity, and sensitivity to interest rate increases”). Here, to prove liability, Lead Plaintiffs simply have to show that: (1) plaintiffs purchased the Certificates; and (2) any part of the Offering Documents contained an untrue statement or omission. See 15 U.S.C. § 77k. Defendants’ liability is susceptible to generalized proof and the predominance requirement is satisfied.

Specifically, the common question that predominates in this litigation is whether Wells Fargo abandoned its underwriting standards to fuel its securitization business. In seeking to transfer this action to the Southern District of New York, Defendants conceded that:

- “[T]he *primary* evidentiary issues [in this action] will relate to the Defendants’ conduct, *not Plaintiff’s actions*” (Defs. Mot. To Transfer, ECF No. 73-1 at 13);
- “[P]laintiffs’ allegations focus on defendants’ conduct and *do not appear to implicate involved questions of fact regarding plaintiffs’ behavior*” (*Id.* at 9);
- “[T]he *obvious* testimonial evidence that would be proffered at a trial *relates to the representations in the Offering Documents*, and how the Certificates were rated” (Defs. Reply Memo. Re Mot. To Transfer, 09-cv-01620-SI, ECF No. 57 at 11); and
- “[T]he *core issues* in this action” are “the representations made in the Offering Documents” and “the operative facts [in this action] relate to the alleged representations made in the Offering Documents” (*Id.* at 13.).

Moreover, the calculation of damages for all of the securities at issue is formulaic pursuant to the statutory formula in Section 11 and subject to generalized proof. See Mason Report, Ex. 1 at ¶¶8, 96-100.

a. Defendants’ “Knowledge” Defense Does Not Predominate

Defendants hypothesize that investors here must have known of the conduct alleged in the Complaint.⁶ As discussed above, however, the record belies Defendants’ speculation. Defendants

⁶ See Opp. at 8-16. Defendants contend that “Plaintiffs must show lack of knowledge to recover on their Section 11 claims,” citing the Second Circuit’s original order in *In re IPO*. See Opp at 8:20-22. Defendants are plainly wrong and ignore that the Second Circuit issued a subsequent, clarifying order in *In re IPO* “[t]o avoid any misunderstanding [and] clarify [its prior order] to reflect the general rule

1 provide no evidence that any class member knew of the untrue statements and omissions in the
 2 Offering Documents for these Certificates. In fact, Defendants admit that [REDACTED]

3 [REDACTED]⁷ Defendants'
 4 expert, Dr. Stephen Prowse, similarly confirmed that [REDACTED]

5 [REDACTED]⁸

6 It is well-settled that in order for individualized issues of “knowledge” to predominate, there
 7 must be “disclosures demonstrating that the alleged fraud was *explicitly* revealed to investors.”
 8 *Nursing Home Pension Fund*, 2006 U.S. Dist. LEXIS 94470, at *39-42 (N.D. Cal. Dec. 20, 2006)
 9 (emphasis in original); *see also Lapin v. Goldman Sachs & Co.*, 254 F.R.D. 168, 183 (S.D.N.Y. 2008)
 10 (rejecting Defendants’ argument because “[Defendant Goldman Sachs] ha[d], at best, proffered
 11 evidence that industry members and academics were generally aware that conflicts involving research
 12 and investment banking divisions within the same firm were prevalent in the industry”); *In re Monster*
 13 *Worldwide, Inc. Sec. Litig.*, 251 F.R.D. 132, 137 (S.D.N.Y. 2008) (rejecting Defendants’ argument
 14 because “Monster provide[d] no direct evidence that any putative class member actually knew about
 15 option backdating at Monster before the scandal became public on June 12, 2006”). As Judge Pechman
 16 observed in recently granting class certification of a Section 11 class, “[t]hat [plaintiff] thought there
 17 was ‘froth’ in the real estate appraisal market is *not* the same as [plaintiff] knowing Defendants were
 18 engaged in the appraisal manipulation alleged in the complaint.” *In re Wash. Mut., Inc. Sec.*
 19 *Derivative & ERISA Litig.*, 2010 WL 4272567, at *6 (W.D. Wash. Oct. 12, 2010) (“*WaMu*”).

20 In the Opposition, Defendants do not point to a single case within the Ninth Circuit finding that
 21 a Section 11 “knowledge” defense raises individualized issues that defeat class certification. In fact, as
 22 Judge Pechman recently reiterated, the Ninth Circuit has squarely rejected Defendants’ argument as a
 23 basis to deny class certification. *See WaMu RMBS*, 2011 WL 1789975, at *2 (The Ninth Circuit has
 24 held that “the defense of non-reliance is *not* a basis for denial of class certification”); *see also In re*
 25

26 that an issuer’s liability under section 11 is absolute, but that it can assert *a defense* that ‘the plaintiff
 27 knew of the untruth or omission at the time of his or her acquisition of the security.’” *See In re Initial*
 28 *Pub. Offering Sec. Litig.*, 483 F.3d 70, 73 (2d Cir. 2007).

⁷ *See* Wells Fargo’s Response to Request For Admissions Nos. 58-62, Ex. 9; Wells Fargo’s Amended
 Response to Interrogatory No. 7, Ex. 23 at 3:15-19.

⁸ *See* Prowse Tr., Ex. 24 at 52:18-23; 58:14-59:4.

1 *Ramtek Sec. Litig.*, 1991 U.S. Dist. LEXIS 5490, at *13 (N.D. Cal. Feb. 4, 1991) (same); *Pilgrim*, 1996
 2 WL 742448, at *5 (“The fact that a significant number of the class members may be subject to a
 3 defense of nonreliance is **not** a reason to deny class certification.”). Disposing of Defendants’
 4 argument, one California District Court explained:

5 [I]f this Court w[ere] to allow Defendants to present evidence that none of the investors
 6 were misled because the truth was on the market, the Court would essentially be allowing
 7 Defendants to assert a defense of non-reliance as a basis for denial of class certification.
But such is not allowed.

8 *Conn. Ret. Plans and Trust Funds v. Amgen, Inc.*, 2009 WL 2633743, at *14 (C.D. Cal. Aug. 12,
 9 2009).⁹

10 Defendants’ reliance on a single out-of-circuit district court decision in *Residential Cap.*, which
 11 is currently on appeal to the Second Circuit, is misplaced.¹⁰ In *Residential Cap.*, the court denied class
 12 certification after finding that the defendants had “mustered a good deal of documentary evidence
 13 imputing knowledge to [WAMCO].” 272 F.R.D. at 168-69. Here, the record is devoid of any such
 14 evidence. See DeLange Decl. ¶¶5-9. Moreover, as Judge Pechman recently explained, *Residential*
 15 *Cap.* is “**not well reasoned**” and “**nowhere** explains why this individualized knowledge rendered class
 16 certification improper.” *WaMu RMBS*, 2011 WL 1789975, at *3. Regardless, “the holding [in
 17 *Residential Cap.*] runs **contrary to Ninth Circuit law**, which defers questions about non-reliance to
 18 trial.” *Id.* at 3.

19 Likewise, Defendants’ assertion that individual knowledge issues predominate because the
 20 Class includes a small number of entities that are defendants in actions relating to their own lending
 21 practices or other home loan originators is wrong. See Opp. at 14-15. As an initial matter, Defendants
 22 offer no evidence that any of these purported class members knew of the misstatements in *Wells*
 23 *Fargo’s* Offering Documents. See *id.*; see also *Lapin*, 254 F.R.D. at 184 (rejecting Defendants’
 24 _____

25 ⁹ The Ninth Circuit has similarly held that “that individual issues relating to the statute of limitations
 26 do not bar certification.” *In re Conseco Life Ins. Co. LifeTrend Ins. Sales and Mktg., Litig.*, 270 F.R.D.
 27 521, 530 n.8 (N.D. Cal. 2010) (citing *Cameron v. E.M. Adams & Co.*, 547 F.2d 473, 478 (9th Cir.
 1976)); *Williams v. Sinclair*, 529 F.2d 1383, 1388 (9th Cir. 1975) (same).

28 ¹⁰ The Second Circuit recently granted plaintiffs’ Rule 23(f) petition to appeal *Residential Cap.*,
 further limiting its value as any form of authority. See Ex. 26; see also *Gengler v. U.S. ex rel. Dept. of*
Defense and Navy, 463 F. Supp. 2d 1085, 1099 (E.D. Cal. 2006) (finding that “[district court opinion’s]
 value as any form of authority is questionable, as the district court’s opinion is currently on appeal...”).

1 speculation that members of class, by themselves being investment banks, had “actual knowledge of ...
 2 any alleged fraud that resulted from conflicts of interest at **GS**”) (emphasis in original); DeLange Decl.
 3 ¶¶5-9. Nevertheless, a similar assertion was recently rejected because the purported knowledge of a
 4 small percentage of the class – in this case, less than 1% – cannot possibly predominate. Specifically,
 5 the court explained:

6 [T]hese institutions [with purported knowledge of the misstatements] make up only 12%
 7 of the putative class. If only 12% of the class has such knowledge and the other 88%
 8 traded in ignorance, individual questions of knowledge do *not* “predominate” over
 common questions.

9 *In re Moody’s Corp. Sec. Litig.*, 2011 WL 1237690, at *9 n.8 (S.D.N.Y. Mar. 31, 2011). The same is
 10 true here.

11 **b. Damages Present Common Questions**

12 The measure of damages in this action is set by statute, which is a common issue. 15 U.S.C.
 13 § 77k; *see also In re Constar Int’l Inc. Sec. Litig.*, 585 F.3d 774, 785-86 (3d Cir. 2009) (observing that
 14 “[t]he formulaic nature of § 11 leaves defendants with little room to maneuver” at the class certification
 15 stage). Dr. Mason explained that damages can be established by common proof as to all class members
 16 with respect to each Offering because “[t]o the extent that there are untrue statements and/or material
 17 omissions in the offering documents, all securities in the offering will be adversely affected.” Mason
 18 Report, Ex. 1 at ¶67. Importantly, Dr. Mason explained that damages could be determined using
 19 common methodologies, either market prices or cash flows. *Id.* at ¶¶8, 96-100. Defendants’ expert Dr.
 20 Cornell [REDACTED]

21 [REDACTED] *See* Cornell Tr., Ex. 25 at
 22 130:16-131:21; *see also* Wells Fargo Response to RFA No. 47, Ex. 9 (admitting that “the Certificates
 23 can be valued”).

24 The Ninth Circuit has long held that “[t]he amount of damages is invariably an individual
 25 question and does not defeat class action treatment.” *Blackie v. Barrack*, 524 F.2d 891, 905 (9th Cir.
 26 1975). Defendants do not cite a single case denying class certification based on difficulties in
 27 calculating damages. In the one case that Defendants do cite on the subject, the Eleventh Circuit
 28 *certified* a class and held that, “in assessing whether to certify a class, the Court’s inquiry is *limited* to

1 whether or not the proposed methods [for computing damages] are *so insubstantial as to amount to no*
 2 *method at all.*” *Klay v. Humana, Inc.*, 382 F.3d 1241, 1259 (11th Cir. 2004); *see also In re LDK Solar*
 3 *Sec. Litig.*, 255 F.R.D. 519, 532 (N.D. Cal. 2009) (“[T]he potentially conflicting incentives regarding
 4 the calculation of damages do *not* preclude certification of the proposed class.”). By all accounts, there
 5 are substantial methods to measure damages in this case.

6 **c. Defendants’ “Negative Causation”**
 7 **Defense Does Not Predominate**

8 Loss causation is not an element of Lead Plaintiffs’ Section 11 claims. *See* Mot. at 9 (citing
 9 cases). Defendants’ “negative causation” defense – *i.e.*, that the decline in the value of the Certificates
 10 was caused by something other than the untrue statements in the Offering Documents – presents
 11 common questions that support class certification. *See, e.g., Constar*, 585 F.3d at 785 (“Any
 12 affirmative defense on this ground would present a *common* issue – not an individual one.”) (emphasis
 13 in original). As the Ninth Circuit explained in *Blackie*, “[t]he fact that a defendant may be able to
 14 defeat the showing of causation as to a few individual class members does *not* transform the common
 15 question into a multitude of individual ones.” 524 F.2d at 906 n.22 (“The right to disprove causation
 16 will *not* render the action unmanageable.”). Adhering to *Blackie*, courts in this Circuit and elsewhere
 17 have observed that there has *never* been an instance “in which a court has ruled that the existence of a
 18 loss causation defense precludes certification under Rule 23(b)(3).” *In re Metro. Sec. Litig.*, 2008 U.S.
 19 Dist. LEXIS 100325 (E.D. Wash. Nov. 25, 2008); *see also In re Dynegey, Inc. Sec. Litig.*, 226 F.R.D.
 20 263, 283 (S.D. Tex. 2005) (same); *WaMu*, 2010 WL 4272567, at *13 (“[T]he Court remains convinced
 21 that the inquiry into loss causation is inappropriate at class certification stage. . . and rejects
 22 Defendants’ negative causation arguments.”). There is no reason to depart from these authorities here.

23 **d. Individual Issues Of Reliance, Materiality**
 24 **And Falsity (If Any) Do Not Predominate**

25 Defendants’ claim that individual issues of reliance, materiality and falsity predominate over
 26 any common issues (Opp. at 18-23) is baseless. With respect to reliance, it is not an element of a
 27 Section 11 claim. *See In re Countrywide Fin. Corp. Sec. Litig.*, 2009 WL 7322254, at *32 (C.D. Cal.
 28 Dec. 9, 2009) (explaining that “[b]ecause § 11 of the ’33 Act imposes nearly strict liability for

1 misrepresentations or omissions in a registration statement, Plaintiffs do not need to rely on a fraud-on-
 2 the-market theory to establish class-wide reliance.”); *see also In re Charles Schwab Corp. Sec. Litig.*,
 3 264 F.R.D. 531, 536 (N.D. Cal. 2009) (finding “far fewer ... manageability problems” because “[t]he
 4 instant Section 11 ... claims do not require proof of reliance”). Contrary to Defendants’ contentions,
 5 investors who purchased after the release of 12 monthly distribution summaries are not required to
 6 plead and prove reliance. *See Opp.* at 18-19. Distribution summaries do *not* qualify as “earning
 7 statements.”¹¹ Finding Defendants’ argument “unpersuasive,” a court recently held that “the
 8 regulations that define ‘earning statement’ are specific and do not appear to contemplate the kind of
 9 Distribution Summaries at issue here.” *Id.* Moreover, “even if such a[n] [earning] statement exists,”
 10 courts have consistently held that a Section 11 class should still be certified because all class members
 11 “still must prove what is essential to the prestatement Section 11” claims.¹²

12 Materiality “is an objective standard” and “is *not* determined ... by the ‘mix of information’
 13 available to each individual plaintiff.” *Constar*, 585 F.3d at 784 (“[B]ecause a misrepresentation is
 14 material if a reasonable investor would have considered a fact important, the effect of a material
 15 misrepresentation is felt uniformly across the class of investors, regardless of whether the market is
 16 efficient.”). Defendants’ contention that individualized issues of “materiality” predominate because
 17 investors purchased the Certificates at different times and with different information available to the
 18 market (*Opp.* at 21) has been rejected by courts in the Ninth Circuit and elsewhere. *See, e.g., Harris v.*
 19 *Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 914-915 (9th Cir. 1964) (class certification proper
 20 even if “the various investors made payments on the securities at different times and stand in different
 21 positions with respect to the representations made to them and the reasonableness of their reliance”);
 22 *Schneider v. Traweek*, 1990 WL 132716, at *4 (C.D. Cal. July 31, 1990) (certifying a class of investors
 23

24
 25 ¹¹ *N.J. Carpenters Health Fund v. Residential Capital, LLC*, 2011 WL 2020260, at *6 (S.D.N.Y. May
 26 19, 2011). The Distribution Summaries also cannot constitute an “earning statement” because they do
 27 not cure the misstatements in the challenged Offering Documents. *See, e.g., In re WorldCom, Inc. Sec.*
 28 *Litig.*, 219 F.R.D. 267, 294 (S.D.N.Y. 2003); *In re Countrywide Fin. Corp. Sec. Litig.*, 588 F. Supp. 2d
 1132, 1162 (C.D. Cal. 2008) (same).

¹² *See, e.g., In re U.S. Fin. Sec. Litig.*, 64 F.R.D. 443, 455 (S.D. Cal. 1974); *accord In re Data Access*
Sys. Sec. Litig., 103 F.R.D. 130, 147 (D.N.J. 1984) (Section 11 class certified even though class
 members purchased after issuance of earning statement); *Weiss v. Tenney Corp.*, 47 F.R.D. 283,
 289 (S.D.N.Y. 1969) (same).

1 spanning across four years even though “Plaintiffs purchased different types of securities ... at different
2 times from different limited partnerships”).

3 Likewise, Defendants’ assertion that purported differences in the risk-profiles of the Certificates
4 at issue (also known as “tranches”) create individualized issues (Opp. at 21) ignores both the law and
5 the facts. It is well-settled that “plaintiffs with a valid securities claim may represent the interests of
6 purchasers of other types of securities in a class action where the alleged harm stems from the same
7 allegedly improper conduct.” *In re Juniper Networks, Inc. Sec. Litig.*, 264 F.R.D. 584, 594 (N.D. Cal.
8 2009). Accordingly, courts have routinely certified global classes of investors in multiple securities
9 with characteristics and risk-profiles far more dissimilar than the Certificates at issue here. *See, e.g.*,
10 *Blackie*, 524 F.2d at 911 (affirming certification of class that included debenture holders and common
11 stock); *Juniper*, 264 F.R.D. at 595 (common stock and zero-coupon convertible senior notes); *In re*
12 *Connetics Corp. Sec. Litig.*, 257 F.R.D. 572, 579-80 (N.D. Cal. 2009) (common stock and
13 bondholders); *WaMu*, 2010 WL 4272567, at *1 (common stock, floating rate notes; 7.25% Notes and
14 preferred stock). The purported dissimilarities between the Certificates in this case pale in comparison
15 to the differences in the securities at issue in *Blackie* and its progeny and, consequently, provide no
16 basis to deny class certification.¹³

17 Factually, *all* class members (no matter which tranche or which Offering they purchased) were
18 invariably damaged if, as Lead Plaintiffs allege and will prove, Wells Fargo systematically abandoned
19 its underwriting standards. *See* Mason Report, Ex. 1 at ¶¶5-6, 55. [REDACTED]

20 [REDACTED] Cornell
21 Tr., Ex. 25 at 109:20-110:3; *see also id.* at 157:10-20 [REDACTED]

22 [REDACTED] Wells Fargo’s systematic abandonment of its underwriting standards increased the number of
23

24 ¹³ Judge Pfaelzer’s motion to dismiss order in *Maine State Retirement System v. Countrywide*
25 *Financial Corp.*, No. 10-0302 (C.D. Cal. May 5, 2011), ECF No. 257, should not affect the result here.
26 As an initial matter, the order is contrary to the majority view and this Court’s decision in *Rafton v.*
27 *Rydex Series Funds*, which held that a plaintiff has standing to sue on behalf of all investors who
28 purchased in different securities pursuant to a single offering. 2011 WL 31114, at *13 (N.D. Cal. Jan.
5, 2011) (J. Koh). Judge Pfaelzer’s order is otherwise irrelevant here because her discussion of the
differences between tranches was made in the context of a motion to dismiss and without consideration
for whether claims relating to the different securities could be brought in one class action. Indeed, if
anything, the discussion supports class certification because the court found, consistent with Dr.
Mason, that the tranches within a mortgage-backed securities offering are “interconnected.” *See* ECF
No. 257 at 15-16; *see also* Mason Report, Ex. 1 at ¶¶6, 63-86.

1 unexpected defaults and increased the risk to all the tranches. As a result, the value of all the securities
2 dropped, and *all* investors were injured.

3 According to Defendants, the class should not be certified because Lead Plaintiffs allege untrue
4 statements and omissions in multiple Offering Documents. *See Opp.* at 19-20. Defendants are wrong.
5 The overwhelming number of issues are common to all 17 Offerings, including issues relating to
6 whether or not Wells Fargo abandoned its stated underwriting standards, Wells Fargo's role and
7 standardization of the 17 Offerings, Wells Fargo Bank N.A.'s control person liability, as well as
8 affirmative defenses based on purported public information such as statute of limitations and negative
9 causation. *See Mot.* at 4-6, 13.

10 Moreover, as explained by the Ninth Circuit in *Blackie*, “[c]onfronted with a class of purchasers
11 allegedly defrauded over a period of time by similar misrepresentations, courts have taken the common
12 sense approach that the class is united by a common interest in determining whether a defendant’s
13 course of conduct is in its broad outlines actionable, which is *not* defeated by slight differences in class
14 members’ positions, and that the issue may profitably be tried in one suit.” 524 F.2d at 902. In that
15 case, the Ninth Circuit found class certification appropriate for a class of investors exposed to *45*
16 *documents* containing differing misrepresentations issued over a *27-month* period. *See id.* In addition,
17 the Court rejected Defendants’ argument here that the class should not be certified because the case
18 would “require inspection of the underlying set of facts to determine the falsity of the impression given
19 by any [statement and] that the underlying facts fluctuate as the business operates.” *Id.*

20 Guided by *Blackie*, courts in the Ninth Circuit have certified countless securities class actions
21 where a common “course of conduct” is alleged, even though the conduct involves multiple
22 representations in multiple documents relating to multiple offerings and securities. *See, e.g., Pilgrim*,
23 1996 WL 742448, at *5 (certifying a class consisting of investors in ten different trusts containing
24 mortgage-backed securities issued pursuant to different registration statements and prospectuses);
25 *Schneider*, 1990 WL 132716, at *13 (certifying a class of investors who purchased their securities
26 pursuant to eight sets of different offering materials because “[t]he overriding ‘theme’ in this case is
27 that all of the various Defendants contributed somehow in preparing and distributing offering
28 materials” that contained the misrepresentations); *In re Heritage Bond Litig.*, 2004 WL 1638201, at *6

1 (C.D. Cal. July 12, 2004) (predominance requirement easily met for investors in eleven different bond
 2 offerings). Consistent with these authorities, this action plainly meets the Ninth Circuit’s test for
 3 predominance in federal securities class actions.

4 **e. The Underwriter Defendants’ Purported**
 5 **“Due Diligence” Defense Will Not Predominate**

6 Defendants’ claim that the seven Underwriter Defendants’ due diligence defenses eclipse the
 7 common issues in this case (Opp. at 27) ignores Ninth Circuit authority and should be rejected. Courts
 8 in this District have certified securities class actions where there were as many as *87, 104, and 150*
 9 underwriter defendants, each with their own potential due diligence defense.¹⁴ These courts have
 10 recognized that due diligence defenses present common questions in Section 11 cases. *See McFarland,*
 11 *96 F.R.D. at 362* (finding “the issue of defendants’ due diligence” a common one to Section 11
 12 claimants). The same is true here: whether the Underwriter Defendants exercised due diligence is a
 13 common legal and factual question for all investors within each Offering.

14 **f. Foreign Transactions Do Not Predominate**

15 Defendants’ speculation that certain transactions in the Certificates may have occurred overseas
 16 and purportedly outside of Section 11’s reach (Opp. at 27-28) does not defeat class certification. First,
 17 Defendants do not identify a single court that has ever denied class certification because some of the
 18 class members purportedly engaged in overseas transactions. *See id.* Second, Defendants fail to identify
 19 a single transaction outside of the reach of the Securities Act. Rather, Defendants speculate that three of the
 20 3,200 absent class members (*i.e.*, less than 1/10th of one percent of the class) “appear” to be foreign entities
 21 based on their names. *See Opp. at 27 (citing Prowse Report at ¶114).* Putting aside whether Defendants
 22 have a viable defense against any of these three class members (which they do not), their speculative
 23 defense provides no basis to deny class certification. *See, e.g., In re Nortel Networks Corp. Sec.*
 24 *Litig.*, 2003 WL 22077464, at *8 (S.D.N.Y. Sept. 8, 2003) (certifying class including potential foreign

25
 26 ¹⁴ *See In re Computer Memories Sec. Litig.*, 111 F.R.D. 675, 687 (N.D. Cal. 1986) (87 underwriters);
 27 *In re Activision Sec. Litig.*, 621 F. Supp. 415, 433 (N.D. Cal. 1985) (150 underwriters); *McFarland v.*
 28 *Memorex Corp.*, 96 F.R.D. 357, 362 (N.D. Cal. 1982) (104 underwriters). Defendants misleadingly
 cite to *In re Prudential-Bache Energy Growth Funds Sec. Litig.*, MDL No. 867, 1991 WL 275771, at
 *5 (E.D. La. Dec. 16, 1991). That decision is an order denying preliminary approval of a settlement
 and does not appear to contain any discussion whatsoever of any *underwriter defendant* due diligence
 defense.

1 investors and holding “that ‘it is well established that a court can certify a class while reserving the
2 right to shape the class more precisely to fit the issues of the case as those emerge during the
3 litigation.’”).

4 2. A Class Action Is Superior To Other Adjudication

5 As set forth in the Motion, “[t]he United States Supreme Court, the Ninth Circuit and its district
6 courts have repeatedly endorsed the class action procedure as the superior method of adjudicating
7 claims under the federal securities laws.” See Mot. at 21-25 (citing *Susser v. Castle Energy*
8 *Corp.*, 1994 WL 247206, at *6 (C.D. Cal. Apr. 25, 1994)). Here, a class action is not only superior to
9 individual actions, it is the *only* sensible course. This is both because there are over 3,200
10 geographically dispersed class members that cannot realistically be joined and further because,
11 according to Defendants, any action filed in the future would be barred by the Securities Act’s three-
12 year statute of repose. See, e.g., *Berkley v. U.S.*, 45 Fed. Cl. 224, 234 (Fed. Cl. 1999) (“[A]n expiring
13 statute of limitations is a ‘legitimate concern’ when deciding whether or not to certify a class, and one
14 which weighs in the plaintiff’s favor.”).

15 In the Opposition, Defendants do not identify a single decision from any court within the Ninth
16 Circuit that has ever found that individual actions are superior to a federal securities class action.
17 Meanwhile, each of Defendants’ assertions in favor of over 3,200 individual actions fail. *First*, the
18 presence of individualized issues of law and fact do *not* render individual actions superior to a class
19 action. To the contrary, courts in this Circuit have consistently held in certifying securities class
20 actions that “[i]ndividual issues arise in *every* class suit If factual differences of this nature were a
21 bar to class certification then class actions would be stripped of its utility.” *In re Alco Int’l Grp., Inc.*,
22 *Sec. Litig.*, 158 F.R.D. 152, 155 (S.D. Cal. 1994); see also *Knapp v. Gomez*, 1991 WL 214172, at *2
23 (S.D. Cal. June 25, 1991) (“[T]he Ninth Circuit, along with the overwhelming weight of authority ...
24 refus[e] to find that class certification is defeated by the possibility of individual questions pertaining to
25 one of the elements of the case’s causes of action.”); see also *In re Vivendi Universal, S.A. Sec. Litig.*,
26 2011 WL 590915, at *58 (S.D.N.Y. Feb. 17, 2011) (“[C]ourts in securities fraud actions have
27 *consistently* recognized that issues of individual reliance can and should be addressed after a class-wide
28 trial, through separate jury trials if necessary.”). Here, the Court may manage any individualized issues

1 that develop during the course of the litigation through, among other mechanisms, bifurcation and
 2 subclassification. *See* Mot. at 24-25 (citing, *inter alia*, *Schneider*, 1990 WL 132716, at *16 (certifying
 3 a global class of investors in eight separate partnerships, but noting that it may later create sub-classes
 4 pursuant to Rule 23(d)).

5 *Second*, that the class here includes *some* large institutions that sustained substantial losses is of
 6 no moment. Courts have with little exception held (contrary to *Residential Cap.*) that a securities class
 7 action is superior to many individual lawsuits, regardless of the size of individuals' losses. *See* Mot. at
 8 22-23 (citing, *inter alia*, *Bd. of Trs. of the AFTRA Ret. Fund v. JPMorgan Chase Bank, N.A.*, 269
 9 F.R.D. 340, 355 (S.D.N.Y. 2010) (“The existence of large individual claims that are sufficient for
 10 individual suits is no bar to a class” particularly where, as here, “the advantages of unitary
 11 adjudication exist to determine the defendant’s liability.”)). Moreover, unlike in *Residential Cap.*, this
 12 class includes over **3,200** geographically dispersed class members (*i.e.*, over five times the number in
 13 *Residential Cap.*), with some of the class members individuals with small holdings and even smaller
 14 potential recoveries. *See* Mot. at 22-23 (citing *In re Worlds of Wonder Sec. Litig.*, 1990 WL 61951, at
 15 *6 (N.D. Cal. Mar. 23, 1990) (rejecting Defendants’ argument because there was no evidence that “*all*
 16 the proposed Debenture subclass members can maintain a class”)).¹⁵

17 *Finally*, Defendants cannot escape a class action merely because a handful of members have
 18 purportedly “opted-out” and brought an action in state court. *See Nelson v. Quimby Island Reclamation*
 19 *Dist. Facilities Corp.*, 1978 WL 1094, at *3 (N.D. Cal. June 9, 1978) (“The fact that a handful of
 20 potential class members have acted on their own does not by itself establish a widespread interest on
 21 the part of class members in individually controlling the prosecution of separate actions.”). In fact, the
 22 opposite is true. That Rule 23 provides class members a mechanism to “opt-out” supports class
 23 treatment here and disposes of Defendants’ contention that class members will be forced to adopt
 24 _____

25 ¹⁵ Contrary to Defendants’ contention otherwise (Opp. at 34), Guam and the other Lead Plaintiffs
 26 testified as to the efficiencies of proceeding and explained how a “go-it-alone” approach would be
 27 financially impossible. *See* Deposition Transcript of Gerard A. Cruz (“Cruz Tr.”), Ex. 27 at 323:16-19,
 28 322:12-14 (explaining that “the decision to go forward as a class seemed to be the most efficient means
 to go about this for us” and that “legal fees, if we had to go it alone and bear the full cost of it alone,
 would have been extraordinarily high.”); Deposition Transcript of Jerome Davis (“Davis Tr.”), Ex. 28 at
 161:8-24 (“members of the class in the aggregate, probably 99 percent of them would be unable to
 pursue litigation on their own”).

1 positions in this action that they find disagreeable. *See, e.g., Roberts v. Heim*, 1989 WL 80403, at *6
 2 (N.D. Cal. Mar. 22, 1989) (“To the extent that there is a conflict between the position taken by class
 3 members in the tax litigation and in the present lawsuit, the conflict can be ameliorated by the ‘opt out’
 4 mechanism.”), *aff’d* 42 F.3d 1401 (9th Cir. 1994).

5 In sum, Defendants ignore the law in this Circuit and provide no basis to depart from the
 6 overwhelming weight of Ninth Circuit authority holding that a class action is superior to thousands of
 7 individual securities actions.

8 **B. Lead Plaintiffs Satisfy The Requirements Of Rule 23(a)**

9 **1. The Claims Of The Proposed Class Representatives**
 10 **Are Typical Of The Claims Of Other Class Members**

11 “[T]he typicality requirement is permissive: ‘representative claims are ‘typical’ if they are
 12 reasonably co-extensive with those of absent class members; they need not be substantially identical.”
 13 *See Mot.* at 14 (citing, *inter alia, In re UTStarcom, Inc. Sec. Litig.*, 2010 WL 1945737, at *5 (N.D. Cal.
 14 May 12, 2010). As set forth in the Motion, Lead Plaintiffs readily satisfy this standard: they assert the
 15 same Section 11 claim, against the same Defendants, based on the same misstatements and omissions,
 16 founded on the same legal and factual theories. *See Mot.* at 14-15.

17 As detailed above, any potential “knowledge” defense against Lead Plaintiffs does not render
 18 them atypical. “Class certification has been denied [on these grounds] *only* where there were
 19 disclosures whose curative nature was not actually or reasonably disputed.” *Shields v. Smith*, 1992 WL
 20 295179, at *5 (N.D. Cal. Aug. 14, 1992); *see also Juniper*, 264 F.R.D. at 589 (“[T]he fact that some of
 21 Plaintiffs’ investment managers received a market report from CFRA opining that Juniper was at risk
 22 for backdating is *not* sufficient to show Plaintiffs will be preoccupied with a unique defense.”).¹⁶ In
 23 this case, Wells Fargo never issued a corrective disclosure, and there is no evidence that any Lead
 24 Plaintiff – or any class member – had actual knowledge of *Wells Fargo’s* abandonment of its

25
 26 ¹⁶ The Ninth Circuit’s decision in *Hanon v. Dataproducts Corp.*, 976 F.2d 497 (9th Cir. 1992), upon
 27 which Defendants purport to rely, is readily distinguishable. As one California district court observed,
 28 “the Ninth Circuit [in *Hanon*] found that a plaintiff could not satisfy the typicality requirement because
 the proposed plaintiff was a ‘professional’ plaintiff who frequently made stock purchases to gain
 standing.... The class representatives here are pension funds, not penny-ante investors who merely
 purchased token shares to buy a ticket in the litigation lotto.” *In re Cooper Cos. Inc. Sec. Litig.*, 254
 F.R.D. 628, 635-36 (C.D. Cal. 2009).

1 underwriting standards. *See* DeLange Decl. ¶¶5-9. Thus, any potential “knowledge” defense cannot
2 render Lead Plaintiffs atypical.

3 **2. The Proposed Class Representatives**
4 **Fairly And Adequately Represent The Class**

5 In the Motion and throughout the past two years of litigation, Lead Plaintiffs and their counsel
6 have fairly and adequately represented the class. *See* Mot. at 16-17; *see also* DeLange Decl. ¶¶17-23.
7 In the Opposition, Defendants do not challenge Lead Plaintiffs and their counsel’s ability, knowledge,
8 integrity or resources to prosecute this action. Beyond that, Rule 23’s “adequacy” requirement asks
9 only whether “the representative’s interests are comparable to those of the absent class members.”
10 *Schlagal v. Learning Tree, Int’l*, 1999 WL 672306, at *3 (C.D. Cal. Feb. 23, 1999). “[T]he mere
11 potential for a conflict of interest is not sufficient to defeat class certification; the conflict must be
12 actual, not hypothetical.” *Meijer, Inc. v. Abbott Labs.*, 2008 WL 4065839, at *5 (N.D. Cal. Aug. 27,
13 2008). No disabling conflicts exist here.

14 Unable to seriously challenge adequacy, Defendants resort to speculation that Lead Plaintiffs
15 will prosecute only their own narrow claim and relinquish the claims of other class members who
16 purchased different Certificates at different times. *See* Opp. at 28-29. The record belies such
17 speculation. Lead Plaintiffs applied to become, and were found fit to serve as, representatives of the
18 class. *See* July 16, 2009 Order, ECF No. 124 at 12 (“[T]here appears to be no reason that [Lead
19 Plaintiffs’] interests would conflict with those of the class (adequacy).”). Each of them has averred that
20 they will abide by their fiduciary duties to the absent class members. *See* Joint Declaration, ECF No.
21 54, Ex. 29 at 2-4. The Lead Plaintiffs have vigorously fought for the claims of all investors in Wells
22 Fargo Certificates. *See* Complaint, ECF No. 133 (asserting claims for 54 Offerings); Amended
23 Complaint, ECF No. 203 (asserting claims for 27 Offerings). Over the last two years of hard-fought
24 litigation, each has fulfilled its obligations to the class by monitoring Lead Counsel, producing tens-of-
25 thousands of pages of documents, responding to written discovery, and sitting for depositions. *See*
26 DeLange Decl. ¶¶21-23. Lead Plaintiffs are clearly committed to pursuing the class claims.

27 In *Blackie*, the Ninth Circuit rejected a similar speculative challenge to adequacy, holding that
28 “[i]t will be in the interest of *each class member* to maximize the inflation from th[e] causes [of the

1 misstatements] at every point in the class period, both to demonstrate the *sine qua non* liability and to
 2 maximize his own potential damages the more the [securities] is inflated, the more every class member
 3 stands to recover.” 524 F.2d 891, 909-10. Lead Plaintiffs and the absent class members here similarly
 4 have an “overriding common interest” in demonstrating the theory set forth in the Complaint – namely,
 5 that Wells Fargo *systematically* abandoned its underwriting standards for *all* Offerings.¹⁷

6 Defendants next speculate that Lead Plaintiffs and the class have actual, conflicting interests
 7 that render Lead Plaintiffs inadequate. “[C]ourts have noted the irony in strenuous objections made by
 8 defendants to the adequacy of plaintiff class representatives” such as the ones lodged here. *Computer*
 9 *Memories*, 111 F.R.D. at 682. “[A] court must be wary of a defendant’s efforts to defeat representation
 10 of a class on grounds of inadequacy when the effect may be to eliminate any class representation.” *Id.*
 11 Defendants’ objections here are not only “ironic” and unfounded, they provide no legal basis to find
 12 Lead Plaintiffs inadequate.

13 *First*, Defendants erroneously conclude that Lead Plaintiffs will take positions in this litigation
 14 adverse to the interests of those absent class members who are alleged to have violated their own
 15 underwriting standards. *See Opp.* at 29-30. As one court in this District explained in rejecting a similar
 16 challenge to lead plaintiffs’ adequacy:

17 [T]he question of whether certain class members benefitted from the [alleged wrongful
 18 conduct] is still several steps removed from the appropriate inquiry.... Even accepting
 19 that some class members [benefitted from the alleged wrongful conduct] while others do
 20 not, answering this question would require a great deal of speculation. This fact alone
 negates the possibility that there is a present and apparent fundamental conflict between
 class members.

21 *Meijer*, 2008 WL 4065839, at *7. For similar reasons, courts in this Circuit have specifically held that
 22 defendants cannot escape class certification by pointing to a few absent class members who by
 23 happenstance are actual or potential defendants in related actions. *See, e.g., Thomas & Thomas*
 24 *Rodmakers, Inc. v. Newport Adhesives & Composites, Inc.*, 209 F.R.D. 159, 168 n.9 (C.D. Cal. 2002)

25
 26 ¹⁷ *See id.* In the Opposition, Defendants mistakenly rely upon a 1977 Eastern District of New York
 27 case, *Weisberg v. APL Corp.*, in which the court found plaintiff was inadequate to represent common
 28 stockholders, convertible and non-convertible securities. *See Opp.* at 29. *Weisberg* is inapposite, as
 this action only involves prime mortgage-backed securities issued by Wells Fargo. Moreover,
Weisberg has been highly criticized. *See, e.g., 7 Newberg on Class Actions* § 22:38 (4th ed.)
 (explaining that the “the best solution is *not* denial [of class certification],” as in *Weisberg*).

1 (rejecting challenge to adequacy even though the class included defendants in other actions “involving
2 factual allegations similar to those alleged in the Amended and Consolidated Complaint...”); *In re*
3 *Unioil Sec. Litig.*, 107 F.R.D. 615, 622 (C.D. Cal. 1985) (finding plaintiffs adequate despite
4 “argu[ment] that [certain class members] will be aligned with the defendants in showing the absence of
5 market fraud in order to prevent any liability [of their own] to the plaintiffs”).

6 *Second*, Defendants contend that ethical rules prohibit Lead Counsel from representing the class
7 because a handful of the absent class members are being sued by Lead Counsel’s firm in actions
8 involving those entities’ underwriting practices. *See Opp.* at 30. Defendants are wrong. It is well-
9 established that, “[i]n the realm of class actions, the rules of disqualification cannot be applied so as to
10 defeat the purpose of the class proceedings.” *Sharp v. Next Entm’t, Inc.*, 163 Cal. App. 4th 410, 434
11 (Cal. App. 2 Dist. 2008). To this end, “courts have ... exempted [from compliance with the conflict of
12 interest rules] attorneys whose adverse positions to absent class members would have violated [the
13 rules governing conflicts] if the rule were mechanically applied.” *In re:??Plasma Derivative Protein*
14 *Therapies Antitrust Litig.*, 2010 WL 1433316, at *3 (N.D. Ill. Apr. 7, 2010). The ABA’s Model Rules
15 of Professional Conduct are in accord, reiterating that “unnamed members of the class are ordinarily
16 *not* considered to be clients of the lawyer for purposes of applying [conflict of interest rules].” ABA
17 Model Rule 1.7 (cmt. 25); *see also Dean v. Kraft Foods N.A., Inc.*, 2004 WL 614588, at *3 (E.D. Pa.
18 Mar. 26, 2004) (finding “little difficulty” in rejecting disqualification motion on such grounds).¹⁸

19 *Third*, according to Defendants, there are irreconcilable conflicts in this case because Lead
20 Plaintiffs who invested in senior tranches “will have to throw the junior investors under the bus” in
21 order to “maintain credibility with the jury.” *See Opp.* at 30. Not only does Defendants’ speculation
22 lack any evidentiary basis, it is contrary to Ninth Circuit law. Such types of speculative conflicts
23 between different securities holders do not render Lead Plaintiffs inadequate because “[e]very class
24 member shares an overriding common interest in establishing the existence and materiality of
25

26 ¹⁸ Defendants’ reliance on *Lewis v. National Football League* – a decision issued two decades ago
27 from a district court in the District of Columbia – is misplaced. That decision predated the 2002
28 amendment to the Rule 1.7 of the Model Rules of Professional Conduct, which confirmed that
“unnamed members of the class are ordinarily *not* considered to be clients of the lawyer for purposes of
applying [conflict of interest rules].” *See* ABA Model Rule 1.7 (cmt. 25). In addition, *Lewis* has been
readily distinguished. *See, e.g., Plasma*, 2010 WL 1433316, at *11.

1 misrepresentations.” *Blackie*, 524 F.2d at 909-11 & n.27 (“We likewise reject the contention that
 2 conflicts between debenture holders and shareholders require decertification”); *see also Dynex*, 2011
 3 WL 781215, at *2 (rejecting Defendants’ argument that “Plaintiff’s interests will conflict with those of
 4 other class members because it purchased from only one tranche . . . , and purchasers of different
 5 tranches, whether superior or subordinate, will have different repayment rights and potential
 6 damages.”).¹⁹

7 *Fourth*, contrary to Defendants’ unsupported conclusion, there will be no difficulty in
 8 apportioning settlement monies. *See Opp.* at 31. As detailed above, [REDACTED]

9 [REDACTED]
 10 [REDACTED] *See infra* at 6-7; *see also DeLange Decl.* ¶¶10-16. Moreover, there is no basis to
 11 deny class certification based on speculative conflicts at the settlement stage. *See Blackie*, 524 F.2d at
 12 909 (“[C]ourts have generally declined to consider conflicts, particularly as they regard damages,
 13 sufficient to defeat class action status at the outset unless the conflict is apparent, imminent, and on an
 14 issue at the very heart of the suit.”); *County of Suffolk v. Long Island Lighting Co.*, 710 F. Supp. 1407,
 15 1417 (E.D.N.Y. 1989) (“The fact that conflicts among class members may arise at the settlement or
 16 damages stage of the litigation does *not* require that class certification be denied.”) (citing *Blackie*).²⁰

17 *Finally*, Defendants speculate that there are irreconcilable conflicts within the class because
 18 some class members will want to show that the value of the securities was especially inflated on the
 19 date they purchased. *See Opp.* at 31. Again, the Ninth Circuit has rejected this argument, finding that
 20 “any conflicting interests in tracing fluctuations in inflation during the class period are secondary, and
 21 do not bar class litigation to advance predominantly common interests.” *Blackie*, 524 F.2d at 910; *see*
 22 _____

23 ¹⁹ *In re NCAA I-A Walk-On Football Players Litigation*, 2006 WL 1207915, at *8 (W.D. Wash. May
 24 3, 2006) (*Opp.* at 30), does not help Defendants. In that case – unlike here – there was a limited
 “damages pie,” which created inevitable conflicts between class members.

25 ²⁰ Defendants mischaracterize and take out of context the Supreme Court’s statement in *Amchem*
 26 *Prods., Inc. v. Windsor*, that “[s]ettlement is relevant to a class certification.” *See Opp.* at 30. Read in
 27 context, the Court’s discussion was limited to a Rule 23(e) settlement-only class, with the Court
 28 confirming that, in such cases, “a district court need not inquire whether the case, if tried, would
 present intractable management problems for the proposal is that there be no trial.” *See* 521 U.S. 591,
 620 (1997); *see also Miller v. Ventro Corp.*, 2001 WL 34497752, at *10 (N.D. Cal. Nov. 28, 2001)
 (distinguishing *Amchem* on these grounds). Defendants similarly mischaracterize the Ninth Circuit’s
 decision in *Hanlon v. Chrysler Corp.*, in which the discussion was also expressly limited to the
 “settlement context.” *See* 150 F.3d 1011, 1019 (9th Cir. 1998).

1 *also Connetics*, 257 F.R.D. at 578 (“Courts have ... repeatedly recognized that putative intra-class
 2 conflicts relating to the times at which particular class members purchased their securities, and which
 3 could potentially motivate different class members to argue that the securities were relatively more or
 4 less inflated at different time periods, relate to damages and do not warrant denial of class
 5 certification.”); *LDK Solar*, 255 F.R.D. at 532 (“[T]he potentially conflicting incentives regarding the
 6 calculation of damages do not preclude certification of the proposed class.”).²¹

7 In sum, Defendants’ varied attempts to conjure up conflicts that render Lead Plaintiffs
 8 inadequate – while great in number – fail.

9 **III. CONCLUSION**

10 For the foregoing reasons, Lead Plaintiffs respectfully request that the Court: (i) certify this
 11 Action as a class action pursuant to Rule 23(a) and 23(b)(3); and (ii) appoint Lead Plaintiffs as
 12 representatives of the proposed class and BLB&G as class counsel.

13 DATED: June 2, 2011

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14
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28 ²¹ The two cases relied upon by Defendants, *Seagate II* and *Balan* (Opp at 31), have been widely discredited and uniformly rejected by courts within the Ninth Circuit and beyond. *See, e.g., Yamner*, 1994 U.S. Dist. LEXIS 20849, at *20 (finding *Seagate II* to be “contrary to established precedent” and “incorrect”); *In re AST Research Sec. Litig.*, 1994 U.S. Dist. LEXIS 20850, at *12-13 (C.D. Cal. Nov. 8, 1994); *see also Picard Chem., Inc. Profit Sharing Plan v. Perrigo Co.*, 1996 WL 739170, at *6 (W.D. Mich. Sept. 27, 1996) (rejecting both *Seagate II* and *Balan*).

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