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10 Attorneys for Defendant  
COUNTRYWIDE HOME LOANS, INC.  
11 and ANGELO MOZILO

12  
13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE BRANCH**

15 MICHAEL BLOMQUIST,  
16 Plaintiff,

17 v.

18 WASHINGTON MUTUAL, a Washington  
corporation; KERRY K. KILLINGER;  
19 JOSEPH W. SAUNDERS; COUNTRYWIDE  
HOME LOANS, INC., a Delaware corporation;  
20 ANGELO MOZILO; WACHOVIA  
CORPORATION, a North Carolina  
21 corporation; KEN THOMPSON; CITIGROUP,  
a Delaware corporation; SANFORD WEILL;  
22 CHARLES PRINCE; GOLDMAN SACHS  
GROUP, INC., a Delaware corporation;  
23 HENRY PAULSON; BEAR STERNS  
COMPANIES, INC., a Delaware corporation;  
24 JAMES CAYNE; THE MCGRAW HILL  
COMPANY, INC., a Delaware corporation;  
25 HAROLD MCGRAW III; WELLS FARGO &  
COMPANY, a Delaware corporation;  
26 PATRICIA R. CALLAHAN; HERBERT M.  
SANDLER; ROCK HOLDINGS, INC., a  
27 Delaware corporation; EXPERIAN  
CORPORATION, a Delaware corporation;  
28 FIMALAC, INC., a Delaware corporation;  
MOODYS CORPORATION, a Delaware

C-07-04108-JF/HLR

**COUNTRYWIDE DEFENDANTS’  
NOTICE OF MOTION AND MOTION  
TO DISMISS FIRST AMENDED  
COMPLAINT; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

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Date: July 11, 2008  
Time: 9:00 a.m.  
Crtrm: 3

1 corporation; JAMES E. GILLERAN; JOHN M.  
2 REICH; JOHN D. HAWKE, JR.; JOHN C.  
3 DUGAN; SUSAN SCHMIDT BIES;  
4 DONALD E. POWELL; SHEILA C. BAIR,

5 Defendants.

6 **NOTICE OF MOTION AND MOTION TO DISMISS**

7 **TO ALL PARTIES AND TO THEIR ATTORNEY(S) OF RECORD:**

8 Defendants Countrywide Home Loans, Inc. and Angelo Mozilo (the “Countrywide  
9 Defendants”) hereby give notice that they will move to dismiss this action, with prejudice, on July  
10 11, 2008 at 9:00 a.m. in Courtroom 3 of the United States District Court for the Northern District  
11 of California, San Jose Branch, located at 280 South 1<sup>st</sup> Street, San Jose, CA 95113, pursuant to  
12 the Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

13 The Countrywide Defendants originally filed an Answer and Affirmative Defenses to the  
14 First Amended Complaint (“FAC”) in this action on March 10, 2008. Since then, a number of  
15 defendants have filed motions to dismiss; for the sake of judicial efficiency, the Countrywide  
16 Defendants seek to join in (rather than separately brief) the arguments presented for dismissal as  
17 set forth in four of their co-defendants’ motions to dismiss.

18 Accordingly, the Countrywide Defendants hereby give notice that they move to dismiss the  
19 FAC on the grounds set forth in each of the following motions, and the Countrywide Defendants  
20 adopt the arguments presented in support thereof:

- 21 (1) Defendants Citigroup, Inc., Sanford Weill, Charles Prince, Goldman Sachs  
22 Group, Inc., the Bear Stearns Companies, Inc., and James Cayne’s (“Banker  
23 Defendants”) Notice of Motion and Motion to Dismiss First Amended  
24 Complaint; Memorandum of Points & Authorities in Support Thereof.  
25 (2) Wells Fargo and Company and Patricia R. Callahan’s Notice of Motion and  
26 Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be  
27 Granted, and Memorandum of Points & Authorities in Support Thereof.  
28 (3) Defendant Experian Holdings, Inc.’s Motion to Dismiss Pursuant to

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Fed.R.Civ.P 12(b)(1) & (6) and 9(b).

(4) Defendants The McGraw Hill Companies, Inc. and Harold W. McGraw, III's Notice of Motion and Motion to Dismiss the Amended Complaint.

In addition, the Countrywide Defendants move for dismissal of the FAC's Sixth Cause of Action, which purports to bring claims for violation of various securities laws, on the grounds that Blomquist lacks standing, and the FAC fails to allege the claim in the detail required by federal law.

The Countrywide Defendants base their own motion on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the complete files and records in this action (including the aforementioned filings by other defendants), and such oral and documentary evidence as may be introduced at the hearing.

**MEMORANDUM OF POINTS AND AUTHORITIES**

1  
2 The Court must dismiss Blomquist’s FAC for the reasons set forth in certain co-  
3 defendants’ pending motions to dismiss, because he failed to plead his standing to bring a  
4 securities fraud claim, and because, even if he could establish that he has standing, he failed to  
5 plead the required elements of a securities fraud claim.

6 **A. The Entire Complaint Should Be Dismissed.**

7 **1. The Co-Defendants Motions Provide Ample Ground For Dismissal.**

8 This Court has before it a number of well-briefed motions to dismiss, previously filed by  
9 most of the defendants in this case. Among the grounds urged by those motions are that the  
10 plaintiff lacks standing to sue, that there is no cause of action for many of the “claims” raised in  
11 the FAC, that the FAC does not meet the standards of Fed. R. Civ. P. 9(b), and that the FAC fails  
12 to state a claim in any event. “Defendants Citigroup, Inc., Sanford Weill, Charles Prince,  
13 Goldman Sachs Group, Inc., the Bear Stearns Companies, Inc., and James Cayne’s (“Banker  
14 Defendants”) Notice of Motion and Motion to Dismiss First Amended Complaint; Memorandum  
15 of Points & Authorities in Support Thereof;” “Wells Fargo and Company and Patricia R.  
16 Callahan’s Notice of Motion and Motion to Dismiss for Failure to State a Claim Upon Which  
17 Relief Can Be Granted, and Memorandum of Points & Authorities in Support Thereof;”  
18 “Defendant Experian Holdings, Inc.’s Motion to Dismiss Pursuant to Fed.R.Civ.P 12(b)(1) & (6)  
19 and 9(b);” “Defendants The McGraw Hill Companies, Inc. and Harold W. McGraw, III’s Notice  
20 of Motion and Motion to Dismiss the Amended Complaint.”

21 The Countrywide defendants will not repeat those arguments here, so as to avoid further  
22 burdening the Court. But the Countrywide defendants join in them, and request dismissal of the  
23 FAC on the grounds set forth in those other defendants’ motions to dismiss.

24 **2. The FAC Does Not Meet Basic Rule 8 Standards.**

25 This Court should dismiss the FAC because Blomquist failed to meet the basic Rule 8(a)  
26 requirement of a “short and plain statement of the claim showing that the pleader is entitled to  
27 relief.” Federal Rule of Civil Procedure 8(a)(2). Even given the most liberal reading, and  
28 allowing a *pro se* plaintiff the benefit of the doubt, the FAC does nothing more than level shrill

1 accusations in an introduction, cite various state and federal statutes (many of which do not  
2 provide for a private right of action), and asserts that most of the defendants violated all of the  
3 statutes listed. The Federal Rules require more. *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1964  
4 (2007) (Plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than  
5 labels and conclusions. . .[f]actual must be enough to raise a right to relief above the speculative  
6 level.”). To survive a motion to dismiss, the FAC must state more than “labels and conclusions,  
7 and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 1964-65  
8 (citations and internal quotation marks omitted). A complaint must contain either direct or  
9 inferential allegations respecting all the material elements necessary to sustain recovery under  
10 some viable legal theory. *Id.* at 1969 (quoting *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149,  
11 1155 (9th Cir. 1989)).

12 Rather than a plain statement of claims and damages that he suffered, Blomquist submitted  
13 a generalized attack on the mortgage lending industry. For each claim in the FAC, Blomquist  
14 failed to set forth a) the particular nature of his own grievance against the Countrywide  
15 Defendants, b) the legal theories that support his claims, c) the damages that he himself suffered,  
16 or d) the grounds upon which this Court may grant relief. Nor did Blomquist request relief that  
17 this Court has power to grant—requesting instead that the Court completely restructure standard  
18 mortgage agreements, set up a 10 million dollar nonprofit organization for the benefit of unnamed  
19 consumers, with no oversight and over which Blomquist has control.

20 Blomquist’s failings are particularly acute with respect to his “claim” against Countrywide  
21 officer, defendant Angelo Mozilo. Despite being personally named, the FAC only refers to  
22 Mozilo one time and states no facts or allegations as to his conduct or role in any of the events in  
23 question. No plaintiff, pro se or otherwise, should be allowed to personally sue a corporate officer  
24 without basis and without revealing why.

25 The Court should dismiss the entire FAC because it lacks any relevant facts about the  
26 Countrywide Defendants or their acts or omissions, and it lacks any relevant facts showing  
27 Blomquist’s entitlement to relief under any statute on which he purports to rely.

28 **B. The Sixth Cause of Action Must Be Dismissed For Additional Reasons.**

1 Apart from the grounds for dismissal of the entire FAC, the “Sixth Cause of Action,” for  
2 securities laws violations should be dismissed because Blomquist has not alleged any interest in  
3 any security. This failing gives rise to a problem with standing, and with his failure to allege a  
4 proper securities law claim.

5 **1. Blomquist Lacks Standing.**

6 To establish standing to bring a claim for securities law violations, Blomquist must allege  
7 that he owned, purchased or sold securities that were affected by alleged misconduct or false or  
8 misleading statements. *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 735-36 (1975)  
9 (standing to bring a private damages action under section 10(b) is limited to actual “purchasers” or  
10 “sellers” of securities), *see* 15 U.S.C. §§ 78j(b), 78(i)(e). Although the Sixth Cause of Action is  
11 alleged to arise under the securities laws, Blomquist does not assert that he owned, purchased or  
12 sold any securities of Countrywide Financial Corporation (“CFC”), the only publicly-traded  
13 Countrywide-related company. The FAC at best alleges only that Blomquist suffered “security  
14 losses” and that such “[s]ecurity losses involve and are not limited to Providian, Washington  
15 Mutual, and Countrywide.” FAC § 69. Blomquist never affirmatively asserted that he owned,  
16 purchased or sold CFC stock at all. The Court should dismiss this cause of action because it fails  
17 to establish the most basic element of a securities fraud claim.

18 **2. Blomquist’s Complaint Fails to Meet The PSLRA’s Pleading**  
19 **Standards.**

20 Separately, the FAC’s Sixth Cause of Action must be dismissed because it does not meet  
21 other pleading requirements. The Private Securities Litigation Reform Act of 1995 (“PSLRA”)  
22 contains heightened pleading standards governing securities fraud complaints. *In re Saxton Sec.*  
23 *Litig. v. Deloitte & Touche LLP*, 156 Fed. Appx. 917, 919 (9th Cir. 2005). Among other  
24 requirements, the PSLRA requires plaintiffs to specify each misleading statement or omission and  
25 specify why each statement or omission was misleading. *Id.*, *see* 15 U.S.C. § 78u-4(b)(1) (2008).  
26 Further, plaintiffs must “state with particularity facts giving rise to a strong inference that the  
27 defendant acted with the required state of mind.” *Id.*, *see* 15 U.S.C. § 78u-4(b)(2). This Circuit  
28 mandates that securities plaintiffs “plead, in great detail, facts that constitute strong circumstantial

1 evidence of deliberately reckless or conscious misconduct." *Janas v. McCracken (In re Silicon*  
2 *Graphics Inc. Sec. Litig.)*, 183 F.3d 970, 974 (9th Cir. 1999). Where the complaint alleges that  
3 multiple defendants violated Section 10(b), the Plaintiff must plead material misrepresentation and  
4 scienter, with particularity, for each individual defendant. See *Shurkin v. Golden State Vinters,*  
5 *Inc.*, 471 F. Supp. 2d 998, 1016 (N.D. Cal. 2006).

6 Blomquist did not allege that either of the Countrywide Defendants said or failed to say  
7 any specific thing at all, failed to explain how any statements are misleading, and failed to plead  
8 any state of mind with specificity. The FAC is particularly lacking as to the individual defendant,  
9 Angelo Mozilo, as to whom almost nothing is alleged. Under these circumstances, the Court must  
10 dismiss the claim.

11 **3. The Countrywide Defendants Cannot Be Liable For Aiding or Abetting**  
12 **Securities Fraud.**

13 Blomquist cannot bring a claim against the Countrywide Defendants for aiding and  
14 abetting securities fraud because liability under federal law does not extend to aider and abettors.  
15 *Stoneridge Inc. Partners, LLC v. Scientific-Atlanta, Inc.*, 128 S.Ct. 761, 769 (2008). As the  
16 Supreme Court recently reaffirmed, a defendant can only be liable for securities fraud *if the*  
17 *plaintiff can establish all of the elements of the alleged fraud as to that defendant. Id.*, citing  
18 *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005). As noted above, Blomquist's FAC  
19 does not allege facts to sufficient to show that Countrywide Home Loans, Inc. or Angelo Mozilo  
20 are liable for securities fraud individually. Blomquist cannot circumvent that standard with a  
21 vague allegation that the Countrywide Defendants aided or abetted other defendants' securities  
22 fraud.

23 **CONCLUSION**

24 For all of the aforementioned reasons, the Countrywide Defendants request that the Court  
25 dismiss the FAC.

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Dated June 6, 2008

Respectfully Submitted,

GOODWIN PROCTER, LLP

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**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10250 Constellation Blvd., Los Angeles, CA 90067.

On **June 6, 2008**, I served on the interested parties in said action the within:

**COUNTRYWIDE DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

by placing a true copy thereof in a sealed envelope(s) addressed as stated below and causing such envelope(s) to be deposited in the U.S. Mail at Los Angeles, California to the following:

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By (MAIL) I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

**- AND -**

By (ELECTRONIC MAIL) I caused the above document(s) to be transmitted to the office(s) of the addressee(s) listed below by electronic mail at the e-mail address(es) set forth above pursuant to Fed.R.Civ.P.5(d)(1). *"A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof of service as required by Fed.R.Civ.P.5(d)(1). A copy of the NEF shall be attached to any document served in the traditional manner upon any party appearing pro se."* to the following:

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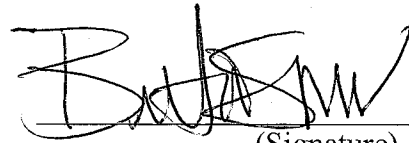
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I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Executed on **June 6, 2008**, at Los Angeles, California.

Britani N. Selzler  
(Type or print name)



(Signature)