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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 WELLS;
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/HRL

**COUNTRYWIDE DEFENDANTS’
REPLY IN SUPPORT OF MOTION TO
DISMISS FIRST AMENDED
COMPLAINT**

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
6 Defendants.

7 Defendants Countrywide Home Loans, Inc. and Angelo Mozilo (collectively, “the
8 Countrywide Defendants”), hereby file their reply in support of their Motion to Dismiss. The
9 Motion should be granted for the reasons stated previously, and for the following additional
10 reasons:

11 1. Plaintiff Michael Blomquist has failed to oppose the Countrywide Defendants’
12 Motion to Dismiss. For this reason alone, the Motion should be granted. *See Ghazali v. Moran*,
13 46 F.3d 52, 54 (9th Cir. 1995) (order granting a motion to dismiss was proper where plaintiff failed
14 to oppose the motion).

15 2. Blomquist now admits that the FAC does not meet the standards for Fed. R. Civ. P.
16 9(b). *See* Opposition at pp. 4:18-19; 4:26; 20:4-9. His FAC, permeated by his admittedly
17 unspecific allegations of fraud, should be dismissed on that basis alone.

18 3. Blomquist again fails to establish that he has standing to bring a securities fraud
19 claim. To demonstrate standing to bring a claim for securities law violations, Blomquist must
20 allege that he owned, purchased or sold securities that were affected by alleged misconduct or
21 false or misleading statements. *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 735-36
22 (1975) (standing to bring a private damages action under section 10(b) is limited to actual
23 “purchasers” or “sellers” of securities), *see* 15 U.S.C. §§ 78j(b), 78(i)(e). To cure his standing
24 problem, Blomquist need only have stated in his Opposition that, if allowed to amend, he could
25 affirmatively assert that he owned, purchased or sold CFC stock. He did not. The Court should
26 dismiss this cause of action because it fails to establish the most basic element of a securities fraud
27 claim, and should do so with prejudice because it is obvious that Blomquist will never surmount
28 this standing hurdle.¹

¹ Blomquist’s reference to other cases filed against the Countrywide Defendants does not help him save the FAC in any event. Blomquist must allege facts showing that the Countrywide

1 4. In opposing the dismissal motions filed by other defendants, Blomquist makes
2 some assertions against the Countrywide Defendants. Treating those assertions as an attempt to
3 bolster his claim, and thereby defeat the Countrywide Defendants' Motion, a brief analysis is in
4 order:

5 a. The Opposition seeks to add to the FAC's factual material, listing links to
6 pending cases against Countrywide, and stating that Defendant Angelo Mozilo has testified before
7 Congress regarding executive compensation. Opposition at pp. 18:21-22, 19: 1-15. These
8 additional statements are neither pertinent or helpful.

9 b. They are not pertinent because a plaintiff may not amend his pleading by
10 way of the opposition to the motion to dismiss. *See U.S. Care, Inc. v. Pioneer Life Ins. Co.*, 244 F.
11 Supp. 2d 1057, 1065 (C.D. Cal. 2002) (because plaintiff had not suggested that it could allege
12 additional facts which supported its claim for relief, plaintiff's bare request to amend in opposition
13 to motion to dismiss was denied as procedurally improper), *see also Posner v. Essex Ins. Co.*, 178
14 F.3d 1209, 1222 (11th Cir. 1999) (court did not err in denying request to amend imbedded within
15 an opposition to a motion to dismiss as not properly raised, especially where plaintiffs did not set
16 out new factual allegations in their opposition memorandum that, if added to the complaint, would
17 have cured jurisdiction defect).

18 c. They are not helpful because Blomquist cannot meet his obligations under
19 Rule 8 with mere labels and conclusions. *See Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1964
20 (2007) (Plaintiff's obligation to provide the grounds of his entitlement to relief requires more than
21 labels and conclusions. . .[f]actual must be enough to raise a right to relief above the speculative
22 level."). Blomquist's "new" information about cases against Countrywide do not show how
23 **Blomquist** is entitled to relief. Nor is the claim that Mr. Mozilo testified before Congress relevant
24 to any claim that **Blomquist** has tried (and thus far failed) to make.

25
26 Defendants are directly liable to him for securities fraud. *Stoneridge Inc. Partners, LLC v.*
27 *Scientific-Atlanta, Inc.*, 128 S.Ct. 761, 769 (2008) (defendant can only be liable for securities
28 fraud if the plaintiff can establish the elements of the alleged fraud as to that defendant). As
noted above, Blomquist conceded in his Opposition that the FAC does not allege facts
sufficient to meet the pleading requirements for fraud generally. He cannot save his poorly
plead suit by relying on others'.

