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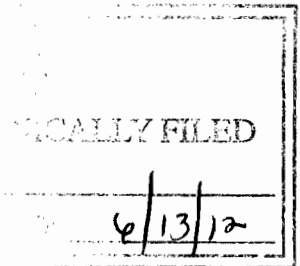
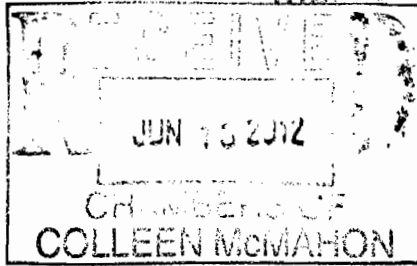
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*I do not do motions by letter.
If Judge Kaplan takes the case
file, if not, all issues raised in this
need to be
subject to*

June 12, 2012

MEMO ENDORSED



BY HAND

Honorable Colleen McMahon
United States District Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

*MO 770 P
Colleen McMahon
6/13/12*

Re: Bayerische Landesbank, New York Branch v. Countrywide Financial Corporation, et al., No. 1:12-CV-04284-CM (S.D.N.Y.)

Dear Judge McMahon:

I am writing on behalf of defendants Countrywide Financial Corporation, Countrywide Home Loans, Inc., Countrywide Home Loans Servicing, LP, Countrywide Securities Corporation, Countrywide Capital Markets, LLC, CWALT, Inc., CWMBS, Inc., CWABS, Inc., and CWHEQ, Inc. (collectively, the "Countrywide Defendants") to respectfully request that the Court vacate the order entered by the Clerk's Office on May 30, 2012 referring this case to the Bankruptcy Court for the Southern District of New York ("Order").¹ See Dkt. No. 3. No bankruptcy proceedings pending in the Bankruptcy Court for the Southern District of New York are related to this case, and this case belongs in federal district court, just like two other cases pending before Judge Kaplan in this district brought by the same plaintiff arising from its purchases of mortgage-backed securities ("MBS").

More specifically, on May 30, 2012, the Countrywide Defendants removed this case from New York state court to this Court on multiple grounds, including diversity jurisdiction pursuant to 28 U.S.C. § 1441(a); jurisdiction provided by the Edge Act, 12 U.S.C. § 632; and jurisdiction under 28 U.S.C. §§ 1334 and 1452 due to the fact that certain now-bankrupt lenders originated many of the loans backing the MBS involved in this case that were issued by Countrywide ("Bankrupt Originators"). Countrywide has

¹ We understand from the Clerk's Office that it has not yet transferred this case to Bankruptcy Court in order to permit this Court time to address whether to vacate the Order.

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claims for indemnification against the Bankrupt Originators pursuant to written loan purchase agreements under which these loans were bought, which gives rise to bankruptcy "related-to" jurisdiction. None of the Bankrupt Originators' bankruptcy cases, however, are pending in the Southern District of New York.

Under Chief Judge Preska's January 31, 2012 Amended Standing Order of Reference, "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 are referred to the bankruptcy judges for this district." Dkt. No. 3. The Countrywide Defendants respectfully state that this case does not satisfy the criteria for referral to the Bankruptcy Court in that no bankrupt entity is a party to this case, and no bankruptcy case to which this case is related is pending in the Bankruptcy Court for the Southern District of New York. Rather, the Bankrupt Originators' bankruptcy proceedings are pending in bankruptcy courts across the country, including in the Central District of California, the Northern District of California, the District of Delaware, the Middle District of Florida, the Southern District of Florida, the District of Maryland, the District of Massachusetts, the Eastern District of New York, the Eastern District of Texas, and the Northern District of Texas. See Dkt. No. 1 ¶ 11. Because none of these Title 11 bankruptcy proceedings are pending in the Southern District of New York, this case cannot be "referred to the bankruptcy judges *for this district.*" Dkt. No. 3 (emphasis added). And, the Countrywide Defendants have been unable to identify any bankruptcy proceeding in the Southern District of New York bearing the case number 09-56992, the Bankruptcy Court docket number to which the Order's docket entry referred this case as being related. See id.

Furthermore, the Countrywide Defendants respectfully state that this case should remain in federal district court. First, grounds for jurisdiction in the district court have been asserted other than on the basis of bankruptcy related-to jurisdiction (i.e., diversity and Edge Act jurisdiction). Second, the Countrywide Defendants simultaneously are sending a letter to the Honorable Lewis A. Kaplan (who is copied on this letter) requesting under Local Civil Rule 1.6 and Rule 13 of the Rules for the Division of Business Among District Judges that he accept this later-filed action as related to earlier-filed actions pending before him, Bayerische Landesbank, New York Branch v. Bear Stearns & Co. Inc., et al., No. 1:12-CV-02804-LAK (S.D.N.Y.) and Bayerische Landesbank, New York Branch v. Merrill Lynch & Co., et al., No. 1:12-CV-03856-LAK (S.D.N.Y.). Like this case originally assigned to Your Honor, these earlier-filed cases were removed on overlapping grounds as this case and were filed by the same plaintiff (Bayerische Landesbank) and same counsel arising from the same plaintiff's purchases of MBS. Like the cases pending before Judge Kaplan, this case likewise should remain in federal district court and not be referred to the Bankruptcy Court. For all these

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reasons, the Countrywide Defendants respectfully request that the Court vacate the Order.²

Sincerely,



Brian E. Pastuszewski
(*pro hac vice* application forthcoming)

cc: Honorable Lewis A. Kaplan (by hand)
Gerald H. Silk, Esq. (Counsel for Plaintiff) (by email)
Michael C. Tu, Esq. (Counsel for Defendant David A. Sambol) (by email)
Matthew Ashley, Esq. (Counsel for Defendant Angelo R. Mozilo) (by email)

² Because this case asserts factual allegations and legal claims substantially identical to those in numerous other MBS cases filed against the Countrywide Defendants that have been centralized for coordinated management before the Honorable Mariana R. Pfaelzer in the Central District of California as part of Multidistrict Litigation Proceeding No. 2265, In re Countrywide Financial Corporation Mortgage-Backed Securities Litigation (the "MDL"), the Countrywide Defendants respectfully note that on June 5, 2012, they notified the United States Judicial Panel on Multidistrict Litigation ("JPML") that this case should be centralized in the MDL pursuant to JPML Rules 1.1(h) and 7.1(a). On June 7, 2012, the JPML issued an order conditionally transferring this case to the MDL.