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20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA
22 WESTERN DIVISION

23 SECURITIES AND EXCHANGE
24 COMMISSION,

25 *Plaintiff,*

26 vs.

27 ANGELO MOZILO, DAVID
28 SAMBOL, and ERIC SIERACKI,

Defendants.

CV 09-03994 JW

**ERIC P. SIERACKI'S SEPARATE
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT OR IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION**

[Fed. R. Civ. Proc. 56]

Date: August 30, 2010
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Judge: Hon. John F. Walter
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Spring Street Courthouse

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

I. INTRODUCTION..... 1

II. SUMMARY OF ARGUMENT 2

III. FACTS SPECIFICALLY RELEVANT TO SIERACKI..... 4

IV. ARGUMENT 5

 A. Sieracki’s Pattern Of Purchasing And Not Selling Countrywide
 Stock During the Relevant Time Negates Scienter 5

 B. The “Evidence” Cited By The SEC Does Not Raise A Triable
 Issue That Sieracki Acted With Scienter In Signing the 2005 10-
 K..... 7

 C. The “Evidence” Cited By The SEC Does Not Raise A Triable
 Issue That Sieracki Acted With Scienter In Signing The 2006
 10-K..... 8

 1. The CCRC Meeting Documents Do Not Raise A Triable
 Issue 9

 2. The Mozilo Communications Do Not Raise A Triable
 Issue 9

 3. The McMurray Allegations Do Not Raise A Triable Issue..... 10

V. CONCLUSION 13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

CASES

Cooperman v. Individual, Inc.
No. Civ. A. 96-12272-DPW, 1998 WL 953726 (D. Mass. May 27, 1998),
aff'd, 171 F.3d 43 (1st Cir. 1999)..... 8

Dellastatious v. Williams
242 F.3d 191 (4th Cir. 2001)..... 13

Geffon v. Micrion Corp.
249 F.3d 29 (1st Cir. 2001) 8

Hollinger v. Titan Cap. Corp.
914 F.2d 1564 (9th Cir. 1990) (en banc)..... 13

Howard v. SEC
376 F.3d 1136 (D.C. Cir. 2004) 12

In re PXRE Group, Ltd. Sec. Litig.
600 F. Supp. 2d 510 (S.D.N.Y. 2009)..... 9

In re REMEC Inc. Sec. Litig.
2010 WL 1676741 (S.D. Cal. Apr. 21, 2010)..... 6

Shuster v. Symmetricom, Inc.
2000 WL 33115909 (N.D. Cal. Aug. 11, 2000), *aff'd*, 35 Fed.Appx. 705
(9th Cir. 2002) 6

Stepak v. Aetna Life & Cas. Co.
1994 WL 858045 (D. Conn. Aug. 29, 1994),
aff'd, 52 F.3d 311 (2d Cir. 1995) 11

In re Worlds of Wonder Securities Litigation
35 F.3d 1407 (9th Cir. 1994)..... 2, 6, 12

Zucco Partners, LLC v. Digimarc Corp.
552 F.3d 981 (9th Cir. 2009)..... 8

1 **I. INTRODUCTION**

2 Eric Sieracki served as Chief Financial Officer of Countrywide Financial
3 Corporation from April 1, 2005 until it was acquired in July 2008. The purported
4 case against him is telling in what is not alleged. The SEC does not challenge the
5 detailed financial statements issued under Sieracki's supervision as CFO. It
6 challenges no oral statements made by Sieracki to any investors in his many
7 presentations and communications, and does not (and cannot) attribute any of the
8 challenged oral statements made by the other Defendants to him. There are no
9 internal statements by Sieracki that conflict with his external statements to
10 investors. Witnesses have praised, not questioned, his integrity. The sole basis of
11 the purported case against Sieracki are generalized puffing statements in Forms
12 10-K regarding areas in which the SEC admits he had no operational
13 responsibilities or expertise: loan underwriting and credit risk.

14 Defendants' Joint Brief shows that the SEC's case for "falsity" is hopelessly
15 undermined by the evidence. This brief shows the failure of the SEC's scienter
16 case against Sieracki, which has always been and remains irrational. Because the
17 SEC may allege scienter generally, the case survived a motion to dismiss, but now,
18 actual evidence must substitute for its wishful hypotheses. Here the evidence not
19 only fails to raise a triable issue of fact: it negates scienter. The SEC cannot
20 surmount an inconvenient truth: during the time that Sieracki allegedly knew and
21 concealed that Countrywide's business was "unsustainable" and misstated or
22 concealed information to inflate its stock price, he bought stock. He sold no stock.
23 He bought stock in a supposedly "unsustainable" business when he exercised
24 options, held the shares and paid tax on the imputed (but never materialized) gain—a
25 higher tax the more the price was "inflated."

26 If Sieracki had sold the stock he bought to take advantage of his supposed
27 guilty knowledge (in accord with classic scienter theory), he would be \$3.6 million
28 richer; if he had sold all his Countrywide stock, he would be \$20 million richer. He

1 did neither. He had no such knowledge; he participated in no fraud. There was no
2 fraud. Rather, Sieracki suffered significant loss from Countrywide's demise in an
3 unprecedented financial crisis, and then from the SEC's false allegations against
4 him. Sieracki deserves summary judgment in his favor.

5 **II. SUMMARY OF ARGUMENT**

6 Relying on hindsight laced with revisionist history, the SEC contends that
7 Countrywide was required to characterize its highly profitable business as
8 "unsustainable" and disputes that Countrywide "managed" risk or made "quality"
9 or "prime" loans. The Defendants' Joint Brief identifies the specific challenged
10 statements and the reasons why the evidence does not raise a triable issue of fact. It
11 shows that:

- 12 • Countrywide disclosed that it participated in the industry-wide expansion of
13 loan underwriting standards, and the risks of pay-option loans.
- 14 • The challenged statements about loan quality are inactionable puffery as a
15 matter of law and in any event are not shown to be false or misleading.
- 16 • The SEC's own "expert" disavows its allegations regarding the term "prime."
17 • Defendants' extensive public disclosures of the very matters they allegedly
18 intended to conceal negate scienter.

19 This brief shows additional reasons why Sieracki deserves summary
20 judgment based on lack of scienter. The evidence fails to raise a triable issue of
21 fact that Sieracki knew that the 10-Ks were materially false or misleading or
22 recklessly disregarded whether they were, and strongly negates scienter:

23 First, Sieracki's undisputed pattern of exercising options, buying and holding
24 stock during the time the SEC theorizes that he was involved in concealing adverse
25 facts demonstrates unequivocally the contrary: his belief that any material adverse
26 information had been disclosed to the market and that he had no motive to engage
27 in a concealment or misstatement. Under the controlling precedent of *In re Worlds*
28 *of Wonder Securities Litigation*, 35 F.3d 1407 (9th Cir. 1994), these facts

1 conclusively rebut any inference of scienter at this, the summary judgment stage.

2 Second, the SEC cannot avoid summary adjudication in Sieracki's favor with
3 respect to the Fiscal Year 2005 10-K filed March 1, 2006 by pointing to the only
4 "evidence" it has cited against Sieracki related to that filing: the minutes of a June
5 28, 2005 Corporate Credit Risk Committee ("CCRC") meeting. The SEC
6 references a snippet about the personal opinion expressed by another officer at this
7 meeting about the level of balance sheet risk, supposedly to support its general
8 assertion that Countrywide misrepresented the risk of its loans. But the accuracy of
9 the Company's balance sheet (like all its financial statements) is unchallenged.
10 Hence investors could make their own assessment of that risk. As a matter of law,
11 there was no duty to also disclose the officer's individual opinion.

12 Third, the SEC cannot avoid summary adjudication in Sieracki's favor with
13 respect to the Fiscal Year 2006 10-K filed March 1, 2007. The SEC points to other
14 CCRC minutes and to communications from CEO Angelo Mozilo, but none of
15 these documents informed Sieracki that the 10-K contained any misstatement. To
16 the contrary, they assured Sieracki that any issues arising from loan production and
17 credit risk management were being identified and addressed, consistent with the 10-
18 K's statement that Countrywide managed credit risk. The SEC also points to a
19 January 2, 2007 email from an officer, John McMurray, opining that one reason
20 why loan delinquencies and defaults would increase in 2007 was the industry-wide
21 expansion of guidelines. But Countrywide and Sieracki personally publicly
22 disclosed the Company's projection that loan delinquencies and defaults would
23 increase in 2007. These disclosures utterly negate the SEC's assertion that Sieracki
24 intended to conceal credit problems. As a matter of law, there was no duty to also
25 disclose McMurray's opinion that expansion of underwriting guidelines was one of
26 many factors that would contribute to causing projected delinquencies. Among the
27 many reasons why this is true is that the industry's and Countrywide's underwriting
28 guideline expansion was already well known to investors through numerous

1 sources, including prospectus supplements filed with the SEC for Countrywide
2 securitizations, and investor presentations depicting Countrywide's underwriting
3 guidelines that the Legal Department informed Sieracki were publicly available.

4 **III. FACTS SPECIFICALLY RELEVANT TO SIERACKI**

5 This section cites certain background facts relevant to Sieracki. Additional
6 facts relevant to scienter are presented in the pertinent sections of the Argument.

7 Sieracki became Countrywide's CFO on April 1, 2005, and served until the
8 Company was acquired in July 2008. As CFO, Sieracki headed the Finance
9 Department which produced Countrywide's financial statements reported in the 10-
10 Ks and on a quarterly basis in 10-Qs and press releases. UF 152-153.¹ The
11 financial statements were never restated and the SEC does not challenge them.
12 Rather, the SEC challenges statements regarding loan underwriting and loan sales-
13 areas in which it admits that Sieracki had no operating responsibilities. UF 154.

14 Sieracki did not have any operational responsibilities for, or expertise in, the
15 mortgage loan production units or in Secondary Marketing, which sold the loans
16 originated by Countrywide. Sieracki thus relied upon the executives and managers
17 responsible for these areas to provide information regarding operational and
18 technical aspects of the mortgage banking business, including the classification of
19 loans as "prime," "subprime" or "nonprime." Sieracki understood that
20 Countrywide sold typically well over 90% of the loans it originated into the
21 secondary market, and that the Company's loan origination standards reflected the
22 criteria of secondary market investors. UF 155-157.

23 The SEC's response to contention interrogatories asking it to set forth the
24 basis of its claims ("SEC Response") states that the only statements it challenges
25 and attributes to Sieracki are contained in 10-Ks he signed for Fiscal Years 2005
26

27 ¹ Citations to "UF #" are to the corresponding numbers in the Statement Of
28 Uncontroverted Facts And Conclusions Of Law In Support Of Defendants' Motion
For Summary Judgment, filed concurrently.

1 and 2006.² Countrywide was a large, complex company and had a detailed process
2 for preparing the 10-Ks. It involved the Legal Department (“Legal”), Finance, the
3 Board and its Audit Committee, outside auditors, business unit senior officers and
4 executives at Countrywide. UF 159-163. The business units and credit risk
5 function were solicited for information to be considered for inclusion in the 10-Ks,
6 and their senior managers were required to review and edit the 10-Ks. The process
7 culminated in they and all executive management, and Legal, certifying that they
8 were not aware of any false or misleading statements in the filing. If a certifier had
9 any issues with a draft, he or she was required to withhold certifying the filing until
10 they were resolved such that he or she could certify the filing. Sieracki observed
11 that Legal was integrally involved in the disclosure process and knew it was
12 responsible for obtaining certifications. He would not and did not sign the 10-Ks
13 until Legal presented him with the final SEC report for filing, and represented that
14 all signed certifications had been received. UF 164-168.

15 **IV. ARGUMENT**

16 **A. Sieracki’s Pattern Of Purchasing And Not Selling Countrywide Stock** 17 **During the Relevant Time Negates Scierter**

18 Sieracki sold no Countrywide stock during his tenure as CFO. UF 169.
19 Rather, he increased his holdings. On three occasions over three years of his tenure
20 (May 26, 2005; July 11, 2006; and May 31, 2007), Sieracki acquired Countrywide
21 common stock. He exercised stock options and paid tax for each of these exercises
22 based on the imputed “profit” he would have earned had he immediately sold the
23 acquired shares on the open market (the difference between the market price and
24 the exercise price, which was \$3.6 million). UF 170-177. Rather than sell, he held
25 onto the shares and his other Countrywide holdings throughout the challenged
26

27 ² UF 158. The SEC abandoned its claim based on the 2007 10-K. *See* Joint Brief
28 §II. The SEC makes a blanket statement that “periodic filings” misstated the word
“prime,” but there is no triable issue as to the claim. Joint Brief §III(A)(5).

1 period. By holding onto his shares as Countrywide and the industry's fortunes
2 declined, Sieracki experienced a loss in value as did other shareholders, albeit likely
3 in a much greater amount—approximately \$20 million. UF 178-181.

4 These stark facts strike a crippling blow to the SEC's claims. It is not only
5 that the SEC cannot supply a motive for fraud. Sieracki's actions are consistent
6 only with a belief that all material adverse information had been reflected in the
7 stock price at all times. Under Ninth Circuit precedent, such facts conclusively
8 rebut any inference of scienter at summary judgment. In *Worlds of Wonder*, the
9 court reasoned that "if, as Plaintiffs allege, the Officers knew that WOW [the
10 company] was heading for financial disaster, they probably would have bailed out
11 of their substantial holdings. Each of the Officer Defendants, by contrast, held onto
12 most of their WOW stock and incurred the same large losses as did the Plaintiffs
13 themselves." The court concluded that "[e]ven if the evidence was sufficient to
14 permit an inference that one or more of the defendants had access to inside
15 information, the defendants' actual trading would conclusively rebut an inference of
16 scienter." 35 F.3d at 1424-25, 1427-28.³

17 The facts here are even stronger in Sieracki's favor. He did not sell any

18
19 ³ Other summary judgment cases agree that an officer's lack of stock sales at the
20 time he supposedly was intent on defrauding investors negates scienter. *See In re*
21 *REMEC Inc. Sec. Litig.*, 2010 WL 1676741, *34 (S.D. Cal. Apr. 21, 2010) (even
22 though evidence gave rise to some inference of scienter against CEO, fact that he
23 did not sell stock "dispels any inference of scienter."); *id.* at **43, 45 (CFO's
24 conduct was "inconsistent with a fraudulent intent" because, *inter alia*, he "did not
25 sell any stock...therefore did not take advantage of an allegedly inflated stock
26 price."); *Shuster v. Symmetricom, Inc.*, 2000 WL 33115909, *8 (N.D. Cal. Aug. 11,
27 2000) (evidence that officers did not sell stock and acquired options at prices tied to
28 allegedly inflated stock price "negates any reasonable inference of scienter"), *aff'd*,
35 Fed.Appx. 705 (9th Cir. 2002); *Kaplan v. Rose*, 49 F.3d 1363, 1380 (9th Cir.
1994) (uncontradicted affidavits from officers attesting to good faith belief in truth
of company's statements, plus no insider trading, suffice to grant summary
judgment on scienter). *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 507 (9th Cir.
1992) (company could possess scienter even though officers did not sell stock,
where there was adverse information within company), is inapposite because this
motion is not brought by a company, as distinguished from an individual.

1 stock, and his repeated buy-and-hold pattern required him to pay tax based on the
2 market price on the day of exercise. Thus, if Sieracki knew of adverse material
3 nonpublic information (as the SEC imagines), it clearly would have been in his
4 interests to cause that information to be disseminated prior to exercising his options
5 and purchasing the stock or, in the alternative, to sell the acquired shares
6 immediately, before the adverse information was disclosed. By purportedly
7 withholding adverse information and then making multiple purchases and not
8 selling, Sieracki would not only have repeatedly forgone the fruit of his purported
9 fraud—he also would have caused himself to pay an unnecessarily higher tax on an
10 inflated stock price he never took advantage of by selling. That the SEC must posit
11 Sieracki engaging in such bizarre, irrational behavior against his self-interest
12 demonstrates that its case against him is ludicrous.

13 We are past the pleading stage, where scienter may be averred generally.
14 Fed. R. Civ. P. 9(b). The SEC can raise no triable issue of fact regarding scienter
15 that is not negated as to Sieracki. He is entitled to summary judgment.

16 **B. The “Evidence” Cited By The SEC Does Not Raise A Triable Issue That**
17 **Sieracki Acted With Scienter In Signing the 2005 10-K**

18 The SEC claims that the 2005 10-K filed March 1, 2006, represented that
19 Countrywide “manage[d]” credit risk and produced “quality” mortgages (referring
20 to the secondary market), when in fact the Company supposedly had abandoned all
21 loan standards and credit risk management. The SEC Response does not cite any
22 document in which Sieracki opined that loan standards or credit risk were different
23 than as stated in the 10-K. Rather, it points to a single document in “support” of his
24 supposed scienter: the minutes of a June 28, 2005 CCRC meeting. UF 181.

25 This document fails to raise a triable issue as to scienter, and hence Sieracki
26 is entitled to summary adjudication as to the 2005 10-K. The minutes do not report
27 any abandonment of loan standards or risk management, nor the notion that
28 Countrywide had an unsustainable business model. Instead, the SEC focuses on the

1 opinion of Stan Kurland, then the Chief Operating Officer, that Countrywide was
2 taking “too much balance sheet risk.” But Countrywide’s unchallenged financial
3 statements reported its balance sheet. Investors could assess on a quarterly basis
4 the level of risk then on the books, and form their own opinions.⁴ There was no
5 duty to also disclose Kurland’s personal opinion, even assuming he still held it at
6 the time of the 2005 10-K (which was filed eight months later and which Kurland
7 personally certified was not false or misleading). UF 183. Investors expect there
8 will be a spectrum of internal opinion within a company, and as a matter of law
9 there is no duty to disclose that spectrum or particular individual opinions.
10 *Cooperman v. Individual, Inc.*, 1998 WL 953726, *10 (D. Mass. May 27, 1998)
11 (“reasonable investors anticipate the possibility of such disputes and therefore
12 understand that descriptions of ‘the Company’s’ objectives do not always-indeed,
13 rarely–reflect the unanimous opinion...”), *aff’d*, 171 F.3d 43 (1st Cir. 1999). An
14 internal difference of opinion is not securities fraud at all.⁵

15 **C. The “Evidence” Cited By The SEC Does Not Raise A Triable Issue That**
16 **Sieracki Acted With Scienter In Signing The 2006 10-K**

17 The SEC also challenges the 2006 10-K filed March 1, 2007, on the same
18 grounds as the 2005 10-K. Again, the SEC Response does not cite any document in
19 which Sieracki opined that loan standards or credit risk were different than as stated
20 in the 2006 10-K. Instead, it points to selected passages from CCRC meeting
21 minutes; communications from CEO Mozilo; and a January 2, 2007 email from
22

23 ⁴ Likewise, the minutes state that the percentage of subprime loans had increased,
24 and the 10-Ks disclosed the percentage of subprime loans. *See* Joint Brief
25 §II(B)(3), UF 182. The SEC’s other arguments simply misread the document.

26 ⁵ *See Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 999 (9th Cir. 2009)
27 (internal disagreement is “far from the deliberate, conscious recklessness required
28 for a strong inference of scienter”); *In re PXRE Group, Ltd. Sec. Litig.*, 600 F.
Supp. 2d 510, 546-47 (S.D.N.Y. 2009) (officers not reckless even if aware of
“concerns” by Chief Actuary that loss reserves were inadequate); *Geffon v. Micrion
Corp.*, 249 F.3d 29, 37-38 (1st Cir. 2001) (granting summary judgment on scienter
even though one officer disagreed with terminology used in public statements).

1 McMurray. These documents do not raise a triable issue as to scienter, and Sieracki
2 is entitled to summary adjudication as to the 2006 10-K.

3 **1. The CCRC Meeting Documents Do Not Raise A Triable Issue**

4 The SEC Response asserts that at the June 22, 2006 CCRC meeting, a Bank
5 officer, Cliff Rossi, stated that models used in part to set the loan loss reserve had
6 underpredicted defaults for loans held in the Bank's portfolio, especially for recent
7 vintages. But Countrywide's financial statements are unchallenged. They reported
8 the reserves and hence disclosed the risk of future loan non-repayments. Hence, the
9 minutes do not contradict the 2006 10-K. (In fact, the document reports that Rossi
10 stated that "[t]he Bank's overall credit quality had been very high and in line with
11 model expectations," and that McMurray reported that all credit risk exposures
12 "were well within tolerance." UF 184.) The SEC Response also refers to the
13 minutes of two CCRC meetings held after the 2006 10-K was filed (on March 12
14 and May 29, 2007). The information at these meetings could not have informed
15 Sieracki that the 2006 10-K was false when made, and the SEC has abandoned its
16 claim based on the 2007 10-K. *See* n.2, *supra*.

17 **2. The Mozilo Communications Do Not Raise A Triable Issue**

18 The SEC Response cites an April 13, 2006 email in which Mozilo expressed
19 dismay at the handling of an immaterial set of loans known as subprime seconds,
20 which had been repurchased from HSBC. There is no evidence that Sieracki was
21 told or believed that any issues as to HSBC undermined loan processes as a whole
22 or that production problems were not remedied. To the contrary, Mozilo directed
23 the heads of loan production and credit risk management (David Sambol and
24 McMurray) to address any issues, and it was reasonable for Sieracki to believe they
25 would. UF 185. Moreover, the 2006 10-K was not filed until ten months later, and
26 the SEC has adduced no evidence as to the status of HSBC at that time.

27 The SEC Response also cites a December 7, 2006 memorandum from Mozilo
28 which discussed comments made in a Wall Street Journal article about subprime

1 loans. At Countrywide, subprime loans represented only 9%-10% of originations.
2 The memorandum does not contradict the 2006 10-K: it supports the 10-K. It
3 stated that loans originated in 2006 had performed better than the industry average,
4 but worse than loans originated in prior years. Thus, the 10-K disclosed a “decline
5 in credit performance...in the non-prime loans we produced, especially those
6 funded in 2006.” UF 186-188. The memo also reported that “product introductions
7 and guidelines have not been implemented indiscriminately,” and set forth
8 numerous steps undertaken to manage guidelines and risk. UF 189-190.

9 Sieracki also was copied on some emails in which Mozilo asked questions
10 and expressed his personal concerns about the risks of pay-option loans. The Joint
11 Brief shows that the risks of pay-options were publicly disclosed in detail. These
12 emails did not inform Sieracki that Countrywide had abandoned loan standards or
13 credit risk management. Rather, they informed him that the CEO was asking
14 appropriate executives to devote attention to matters of concern, appropriate for any
15 well-run business. UF 191. Moreover, as explained above, there was no duty to
16 disclose Mozilo’s personal opinions.

17 **3. The McMurray Allegations Do Not Raise A Triable Issue**

18 Finally, the SEC Response cites to a January 2, 2007 email from McMurray
19 to Sieracki. In response to a question regarding credit expenses for the upcoming
20 year 2007, McMurray opined that loan delinquencies would increase. UF 192.
21 The SEC claims that Sieracki concealed this assessment, and McMurray’s reference
22 to underwriting guidelines in the same email. The SEC also cites to a February 26
23 reference in McMurray’s notebook to “underwriting guidelines” and
24 “affordability,” which it construes as a proposed disclosure that did not appear in
25 the 2006 10-K. These allegations cannot raise a triable issue for several reasons.

26 First, the SEC ignores Countrywide’s public statements, which disclose what
27 Sieracki supposedly intended to conceal. Countrywide’s January 30, 2007 press
28 release announcing Fourth Quarter 2006 results stated that the Company was

1 “preparing for increased borrower delinquencies and continued credit deterioration”
2 and that the industry “will experience...increased defaults and foreclosures...” UF
3 193. In the quarterly conference call on the same day, in response to a question
4 whether Countrywide’s guidance for 2007 “reflect your expectations for increased
5 delinquencies and continued credit deterioration,” Sieracki said that it did: “...we
6 also expect this loan season...that delinquencies will go up. And so that’s typically
7 baked into our probability models as well.” Another officer (Sambol) disclosed
8 that “a liberal credit environment over the last several years all of which is now—as
9 rates are going up, as credit is tightening, is going to contribute in our view to
10 continued pressure on delinquencies and defaults and associated credit risk.” UF
11 194-195. The 2006 10-K, filed on March 1, continued the adverse predictions. It
12 said that Countrywide expected delinquencies to increase for many reasons,
13 including under the headings: “*We may experience credit losses due to downward*
14 *trends in the economy and in the real estate market*” and “*Impact of Decline in*
15 *Credit Performance*.” The 10-K also noted that “changing borrower profiles and
16 higher combined loan-to-value ratios contributed to the increased nonprime
17 delinquency.” UF 196-197.

18 Second, the SEC’s apparent position that a company which makes a forecast
19 has a duty to also disclose every opinion or assumption underlying the forecast has
20 no basis in the securities laws. The fact that the Company made a forecast—
21 especially, as here, an adverse one—did not impose a duty to list all assumptions that
22 might contribute to the forecast, and there is no duty to disclose the opinions.
23 *Brody v. Transitional Hospitals Corp.*, 280 F.3d 997, 1005, 1007 (9th Cir. 2002).

24 Third, the general expansion of guidelines was already well known to
25 investors, from Countrywide’s disclosures and many other public sources. *See*
26 Joint Brief §II(B). As a matter of law, there is no duty to disclose information that
27 already has been disclosed. *Worlds of Wonder*, 35 F.3d at 1415-20; *Stepak v. Aetna*
28 *Life & Cas. Co.*, 1994 WL 858045, *12 (D. Conn. Aug. 29, 1994) (no duty to

1 disclose percentage of non-amortizing mortgage loans in portfolio where practice of
2 providing loans was common knowledge), *aff'd*, 52 F.3d 311 (2d Cir. 1995).

3 Fourth, Sieracki knew that the general expansion of guidelines already was
4 well-known via the massive public disclosures about Countrywide and the industry
5 (including disclosures from McMurray). UF 198. It is ludicrous to argue that he
6 would have thought the expansion even could have been concealed, let alone that it
7 was. Indeed, Sieracki signed registration statements for Countrywide subsidiaries
8 that issued mortgage-backed securities. He believed that the hundreds of
9 prospectus supplements for these securitizations were accessible to Countrywide
10 investors; given that they were filed with the SEC, and prominently displayed
11 references to Countrywide throughout, his belief clearly was reasonable. UF 199.

12 Fifth, Sieracki lacked scienter because he relied in good faith on advice and
13 information provided by Countrywide's in-house lawyers. *Howard v. SEC*, 376
14 F.3d 1136, 1147 (D.C. Cir. 2004) (reliance on counsel is "evidence of good faith, a
15 relevant consideration in evaluating a defendant's scienter"). For example, the
16 written Disclosure Controls and Procedures designated Michael Udovic as the SEC
17 Lawyer responsible for many elements of the disclosure process. Udovic expressly
18 informed Sieracki that detailed information about Countrywide's loans and loan
19 standards had been and was being made publicly available through presentations to
20 investors. Udovic never advised Sieracki that this type of information was required
21 to be in the 10-K, even though Udovic considered the public dissemination of the
22 presentations at the same time he was reviewing the draft Form 10-K for 2005.
23 Neither did any other lawyer, including the Company's chief lawyer, Sandor
24 Samuels (whose name appeared on the cover of many of the registration
25 statements) and its General Counsel, Corporate and Securities, Susan Bow (who
26 served on the Disclosure Committee with Udovic and Sieracki). UF 200-203.

27 Sixth, there is no evidence that Sieracki acted other than in good faith. In
28 February 2007, the Chief Accounting Officer, Laura Milleman, informed Sieracki

1 that the reporting group was working on incorporating McMurray's suggestions
2 into the 10-K. UF 204. The SEC contends that as drafting continued, text
3 regarding underwriting guidelines and affordability was edited out on February 26.
4 But the SEC ignores the context. Milleman and her supervisor, Anne McCallion,
5 told Sieracki that edits had been proposed to a section for which McMurray
6 previously had provided language. Sieracki reported this to McMurray, and noted
7 that there was time to discuss it if he thought the text needed to be included.
8 McMurray did not object to the editing of the text, even as he made suggestions
9 regarding other text in the draft 10-K. UF 205-206. McMurray certified the 10-K
10 as being accurate and not misleading and Milleman signed the 10-K. Sieracki
11 signed the 10-K once it was presented to him by Legal with a representation that all
12 certifiers had certified it. UF 207-209.

13 Courts have recognized that good faith reliance on procedures designed to
14 ensure compliance with the securities laws, including the involvement of lawyers
15 and other professionals, negates scienter. *See Dellastatious v. Williams*, 242 F.3d
16 191, 193, 195-97 (4th Cir. 2001) (affirming summary judgment for directors who
17 relied on company's "system for identifying and correcting any errors in the
18 offering documents").⁶ That is what occurred here. The SEC has not adduced any
19 evidence to raise a triable issue that Sieracki either knew that any statement in
20 Countrywide's SEC filings was false or misleading or that he engaged in an
21 extreme departure from the standard of care expected of a CFO regarding the truth
22 of statements in the SEC filings, as is required to show recklessness. *Hollinger v.*
23 *Titan Cap. Corp.*, 914 F.2d 1564, 1568-69 (9th Cir. 1990) (en banc).

24 V. CONCLUSION

25 Sieracki is entitled to judgment in his favor.

26
27 ⁶ *See also In re Oracle Corp. Sec. Litig.*, 2009 WL 1709050, *32 (N.D. Cal. June
28 19, 2009) (as a matter of law, CFO could not be reckless for reaffirming company's
forecast, which was the product of an internal process).

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Respectfully submitted,

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DLA PIPER LLP (US)

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