

FILED

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U.S. COURT OF APPEALS

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**MATTHEW C. KILGORE, individually  
and on behalf of all others similarly  
situated; WILLIAM BRUCE FULLER,  
individually and on behalf of all others  
similarly situated,**

Plaintiffs - Appellees,

v.

**KEYBANK, NATIONAL  
ASSOCIATION, successor in interest to  
KeyBank USA, N.A.; KEY  
EDUCATION RESOURCES, a division  
of KeyBank National Association;  
GREAT LAKES EDUCATION LOAN  
SERVICES, INC., a Wisconsin  
corporation,**

Defendants - Appellants.

No. 09-16703

D.C. No. 3:08-cv-02958-TEH

**ORDER**

**MATTHEW C. KILGORE, individually  
and on behalf of all others similarly  
situated; WILLIAM BRUCE FULLER,  
individually and on behalf of all others  
similarly situated,**

Plaintiffs - Appellants,

v.

**KEYBANK, NATIONAL  
ASSOCIATION, successor in interest to  
KeyBank USA, N.A.; KEY  
EDUCATION RESOURCES, a division  
of KeyBank National Association;  
GREAT LAKES EDUCATION LOAN  
SERVICES, INC., a Wisconsin  
corporation,**

Defendants - Appellees.

No. 10-15934

D.C. No. 3:08-cv-02958-TEH

**KOZINSKI**, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Federal Rule of Appellate Procedure 35(a) and Ninth Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.