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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8  
9 In Re: Allstate Life Insurance Company  
10 Litigation

No. CV-09-08162-PCT-GMS

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**ORDER**

15 Pending before the Court is Defendants' Joint Motion to Dismiss Claims of Non-  
16 Party Bondholders. (Doc. 530.) For the reasons discussed below, Defendants' motion is  
17 denied in part and granted in part.

18 **BACKGROUND<sup>1</sup>**

19 This action arises from the offering and sale of revenue bonds used to finance the  
20 construction of a 5,000-seat event center in the Town of Prescott Valley, Arizona. In  
21 2005, various parties purchased approximately \$35 million in bonds pursuant to a set of  
22 offering documents entitled the "Official Statements" ("OS"). The Town of Prescott  
23 Valley pledged certain tax revenues to be used to service the bonds. Wells Fargo Bank,  
24 N.A. (the "Trustee") was appointed as the Indenture Trustee for the bondholders and  
25 gained certain rights and responsibilities in relation to the bonds pursuant to an Indenture  
26 of Trust. For instance, pursuant to the Indenture of Trust, the Trustee obtained authority

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28 <sup>1</sup> For a more detailed description of the background and facts, see the Court's Order of  
November 3, 2010 (Doc. 212).

1 to bring claims on the bondholders' behalf.

2 In 2009, the majority bondholder, Allstate Life Insurance Company, commenced  
3 this action against various parties, including the Town and certain Underwriters (the  
4 "Defendants"). Allstate asserts federal and state securities fraud claims, and common-law  
5 claims for fraud, aiding and abetting fraud, and negligent misrepresentation. The Trustee  
6 has brought additional claims on the behalf of individual bondholders, including a  
7 common-law negligent misrepresentation claim and a claim under the Arizona State  
8 Securities Act, A.R.S. § 44-1991.

9 On April 5, 2011, Defendants served interrogatories on the Trustee seeking  
10 individualized information about specific bondholders, particularly with respect to their  
11 individual reliance and the remedies each sought. Because Defendants found the  
12 Trustee's responses to be inadequate, the parties sought a telephonic discovery  
13 conference with the court.

14 On March 8, 2012, the Court held a telephonic conference with the Parties  
15 concerning items of discovery. Despite the years that this case had been ongoing, the  
16 Trustee had not yet responded to Defendant's interrogatories concerning the Trustee's  
17 state law claims or identified the individual brokers, bondholders, and accompanying  
18 evidence on which it intended to base these claims. Accordingly, the Court ordered the  
19 Trustee to "identify all such witnesses and potential exhibits by no later than June 15,  
20 2012." (Doc. 495.) The reason for requiring the Trustee to identify the witnesses was so  
21 that the Defendants would have time, within the remaining discovery period, to depose  
22 those witnesses and conduct further discovery of the facts upon which the Trustee  
23 intended to build its case. Thus, the Court directed that "[a]fter the Trustee has identified  
24 such witnesses and potential exhibits, the Defendants on these claims will have until July  
25 2, 2012 to evaluate the witnesses and, if necessary, to request an extension in the  
26 discovery deadlines and remaining case schedule to take appropriate discovery of the  
27 persons and items identified." (*Id.*)

28 Following the Court's March 8 order, the Trustee sent questionnaires to individual

1 bondholders asking them for basic contact information, the face value and date of  
2 purchase of their bonds, the name of the broker and brokerage firm from which they  
3 purchased the bonds, and information regarding their reliance on either the Official  
4 Statements or their broker recommendations. (*See* Doc. 550-1.) By June 15, the Trustee  
5 provided Defendants with two spreadsheets identifying the bondholders on behalf of  
6 which the Trustee purports to bring claims. On June 22, 2012, the Trustee consolidated  
7 these two spreadsheets, and produced a single list of 195 bondholders.<sup>2</sup> (Doc. 532.) The  
8 Trustee also produced completed questionnaires which it had received back from 142 of  
9 the individual bondholders. (Doc. 550-1.) Of the 195 listed bondholders, fifty-three never  
10 returned the questionnaires. (Doc. 532-2 at 2.) Twenty-seven responded by either  
11 checking “No,” “Do Not Recall,” or leaving blank the questions asking if they relied on  
12 either the OS or their brokers in purchasing the bonds.<sup>3</sup> (*Id.* at 4, 10–11.) Ninety-seven  
13 responded that they relied on their brokers in making their purchases.<sup>4</sup> (*Id.* at 8, 10–11.)  
14 Only eighteen of them responded that they had relied on the OS.<sup>5</sup> (*Id.* at 9, 10.)

15 The Trustee also produced on June 15 a general statement of the evidence it  
16 intended to rely on:

17 account statements, trade confirmations, and other documents relating to bond  
18 transactions obtained from bondholders and/or their custodians, deposition  
19 testimony and exhibits from the depositions of defendants Edward Jones, R.W.  
20 Baird, and Southwest Securities, and their employees, and of third-party brokers,  
21 RBC/Voyageur and Lawson Financial, and their employees, including Mary  
22 Piontek, Stina Wishman, Joseph Riley, John Gresham, Drew Kanyer, Charles  
23 Howell, Brett Kimes, Terry Forsberg, and Raye Kanzenbach, as well as deposition  
24 testimony and bond transaction documents from Individual Plaintiffs Ronald  
25 Covin, Bernard Patterson, Allen Patzke, Walter Krause and Larry Verhulst. (Doc.  
26 542 at 4.)

24 <sup>2</sup> The original list produced by the Trustee contained 206 names. However, the list  
25 included the five named plaintiffs, whose claims are not at issue here. It also included six  
26 names which appeared twice. Taking out the named plaintiffs and the bondholders whose  
27 names were repeated, the number of remaining bondholders is 195.

26 <sup>3</sup> This number includes twenty-four bondholders who purchased in the original offering  
27 and three bondholders who purchased in the secondary market.

27 <sup>4</sup> This number includes eighty-one bondholders who purchased in the original offering  
28 and sixteen bondholders who purchased in the secondary market.

28 <sup>5</sup> This number includes seventeen bondholders who purchased in the original offering and  
one who purchased in the secondary market.

1 The Trustee later stated in an email that it did “not intend to call the individual  
2 broker/financial advisers who sold the bonds and who are identified on [the chart of 195  
3 bondholders].” (Doc. 530-9 at 1.) However, it reserved the right to call the witnesses  
4 from Stern (succeeded by Southwest Securities), Baird, Jones, Lawson, and RBC which it  
5 identified in its June 15 disclosure. (*Id.*)

6 The Defendants asserted that the Trustee’s disclosure of the questionnaires,  
7 spreadsheets, and list of evidence did not adequately comply with the Court’s March 8  
8 Order requiring the Trustee to identify “all witnesses and potential exhibits” on which it  
9 based its claims for state securities violations and negligent misrepresentation under state  
10 law. (Doc. 595.) On June 26, the Court held a telephonic conference with the Parties to  
11 resolve the question. (Doc. 517.)

12 As a result of its determination that the Trustee’s June disclosures may have been  
13 insufficient to support the elements of the two claims based on state law, the Court  
14 authorized Defendants to file a single brief “directed to the . . . contention that [the  
15 Trustee] has failed to identify specific facts with respect to the individual plaintiffs that  
16 [it] designated on June 15 sufficient to state a claim based on reliance under either  
17 Arizona state securities statutes or the common law of [negligent misrepresentation].”  
18 (Doc. 517.) The Court set dates for the briefing.

19 Despite the pending briefing schedule on the adequacy of the disclosures made by  
20 the June 15 deadline, the Trustee continued to research facts pertaining to the individual  
21 state claims that it asserted on behalf of the individual Plaintiffs. For example, it  
22 disclosed sixty-three affidavits from individual plaintiffs based on follow-up telephone  
23 conversations that it had with these individuals in August—more than two months after  
24 the Court’s deadline. (Doc. 550-2.)

25 Defendants now bring a Rule 37 motion for discovery sanctions, requesting that  
26 the Court dismiss Counts 1 and 2 of the Trustee’s Complaint for failing to comply with  
27 the Court’s March 8 Order. Defendants assert that this sanction is appropriate because the  
28 Trustee’s disclosures “did not elicit meaningful [bondholder]-specific evidence about

1 what exactly any [bondholder] relied on, or knew or did not know, in connection with”  
2 the bondholder’s decision to purchase. (Doc. 530 at 3.) In opposition, the Trustee  
3 contends that it fully complied with the March 8 Order, (Doc. 542 at 3), and that its lack  
4 of specifics on the issue of reliance is irrelevant because (1) the majority of bondholders  
5 relied on their brokers, rather than specific statements in the OS, and (2) reliance is not  
6 required for the state-law securities claim (*id.* at 16–17). In addition, the Trustee requests  
7 that the Court consider the claim of an additional bondholder not disclosed in the June 22  
8 list of 195 bondholders. (*Id.* at 5 n.2.)

## 9 DISCUSSION

### 10 I. Legal Standard

11 Federal Rule of Civil Procedure 37 gives a district court power to issue whatever  
12 orders “‘are just’ in regard to a party’s failure to obey a discover order.” *Valley Eng’rs,*  
13 *Inc. v. Elec. Eng’g Co.*, 158 F.3d 1051, 1056 (9th Cir. 1998); FED. R. CIV. P.  
14 37(b)(2)(A)(v). This includes the power to sanction a party by “dismissing the action or  
15 proceeding in whole or in part.” *See Valley Eng’rs*, 158 F.3d at 1056 (9th Cir. 1998);  
16 *Henry v. Sneiders*, 490 F.2d 315, 318 (9th Cir. 1974) (“Where oral proceedings  
17 unequivocally give a litigant notice that certain documents are to be produced, the  
18 absence of a written order does not preclude the entry of a default judgment for failure to  
19 comply.”). Similarly, under Rule 41 a district court may dismiss a claim or the action for  
20 a party’s failure to comply with the Federal Rules of Civil Procedure or an order. FED. R.  
21 CIV. P. 41(b) (“If the plaintiff fails to prosecute or to comply with these rules or a court  
22 order, a defendant may move to dismiss the action or any claim against it.”); *see Fid.*  
23 *Philadelphia Trust Co. v. Pioche Mines Consol., Inc.*, 587 F.2d 27, 29 (9th Cir. 1978) (a  
24 plaintiff has the general duty to prosecute his case).

### 25 II. Analysis

#### 26 A. Bondholders Not Identified as of the June 15, 2012 Deadline

27 Defendants first argue that the Trustee is precluded under Rules 37 and 41 from  
28 bringing claims on behalf of any bondholders which were not identified as of the June 15,

1 2012 deadline. (Doc. 530 at 8.) In determining whether a plaintiff’s failure to comply  
2 with a discovery order warrants dismissal, a district court must weigh five factors: “(1)  
3 the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage  
4 its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
5 disposition of cases on their merits; and (5) the availability of less drastic sanctions.”  
6 *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (quoting *Henderson v. Duncan*, 779  
7 F.2d 1421, 1423 (9th Cir. 1986)). In this case, each of these factors weighs in favor of  
8 precluding the Trustee from prosecuting claims for bondholders not identified by the  
9 Court-imposed deadline.

10 **1. Judicial Efficiency.**

11 The first two factors—the public’s interest in expeditious resolution of litigation  
12 and the Court’s need to manage its docket—relate to judicial efficiency, *see Nealey v.*  
13 *Transportacion Maritima Mexicana, S. A.*, 662 F.2d 1275, 1279 (9th Cir. 1980), and  
14 therefore are usually reviewed in conjunction, *see In re Eisen*, 31 F.3d 1447, 1452 (9th  
15 Cir. 1994). These two factors generally favor dismissal. *See Wanderer v. Johnson*, 910  
16 F.2d 652, 656 (9th Cir. 1990). The touchstone of dismissing a case for lack of  
17 prosecution, however, remains a finding of an unreasonable delay. *See In re Eisen*, 31  
18 F.3d at 1451 (citing *Henderson*, 779 F.2d at 1423).

19 The Ninth Circuit has recognized that a district court’s determination as to what is  
20 unreasonable is to be deferred to, as the district court “is in the best position to determine  
21 what period of delay can be endured before its docket becomes unmanageable.” *Id.*  
22 (citing *Henderson*, 779 F.2d at 1423). In this case, the Trustee, which filed its complaint  
23 over two years ago, (Doc. 130), has waited until the eve of the expiration of the discovery  
24 period to identify the specific bondholders on behalf of which it wishes to bring claims.  
25 Moreover, the Court gave the Trustee a clear deadline after which it was to be precluded  
26 from identifying additional bondholders. The Trustee has not identified good cause for  
27 why this deadline should be modified. Allowing the Trustee to wait any longer before  
28 identifying individual bondholders would create unreasonable delay.

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**2. Fairness to the Litigants.**

The next two factors—the risk of prejudice to the defendants and the public policy favoring disposition of cases on their merits—“implicate a federal interest in fairness to litigants.” *Nealey*, 662 F.2d at 1279. With respect to undue prejudice, the Trustee’s excuse for its delay must be “anything but frivolous.” *Id.* at 1281. Here, the Trustee has not provided *any* excuse for its failure to identify and acquire a questionnaire prior to the June 15 deadline from the bondholder it seeks to add. (*See* Doc. 542 at 6 n.2). The Court’s dismissal of this bondholder’s claim is not, therefore, unreasonably prejudicial. The fourth factor—the preference for resolving a case on the merits—“cuts against a default or dismissal sanction.” *Wanderer*, 910 F.2d at 656. The Court does not find any reason to disturb this general principle, particularly in light of its discussion of prejudice and the fact that the third and fourth factors both relate to fairness. *Nealey*, 662 F.2d at 1279.

**3. Less Drastic Sanctions.**

Lastly, the Court is to consider the availability of less drastic sanctions. “Dismissal is a harsh penalty and is to be imposed only in extreme circumstances.” *Henderson*, 779 F.2d at 1423 (citation omitted). In this case, however, the Trustee had nearly two and a half years to identify bondholders, and failed to do so until the eve of the expiration of the discovery period. To provide the Trustee with any more time to identify bondholders would require the Court to extend the discovery period even further than it has already done and would prejudice the numerous other parties to this lawsuit. The Court finds, therefore, that no less drastic sanctions are available.

In short, based on its examination of the Rule 41(b) factors, the Court finds that the Trustee is precluded from bringing claims on behalf of those bondholders which were not identified as of the June 15, 2012 deadline. The Trustee’s request to add a claim on behalf of the Catholic Diocese of Wilmington, Delaware is therefore denied. (*See* Doc. 542 at 5 n.2).

1           **B.     Bondholders Identified as of the June 15, 2012 Deadline**

2           Defendants also contend that the Court should dismiss the Trustee’s claims on  
3 behalf of those bondholders identified in the spreadsheets and questionnaires produced by  
4 the Trustee. Defendants contend that the Trustee’s questionnaires “did not request, and  
5 therefore did not elicit, meaningful Holder-specific evidence about what exactly [these  
6 bondholders] relied on” in their purchase of the Bonds. (Doc. 530 at 3). Where reliance is  
7 concerned, the completed questionnaires generally elicited only a bondholder’s “Yes,”  
8 “No,” or “Do not recall” answer to questions such as “did you rely on the  
9 recommendation of the broker[?]” and “did you rely on the accuracy and completeness of  
10 the Official Statement[?]” (See Doc. 550-1). Defendants contend that because the Trustee  
11 did not “elicit any specific information as to what particular aspect of the [Official  
12 Statements] the respondent . . . relied on, or what the specific basis was for any  
13 recommendation by a broker,” Defendants are unable to “link” the respondent’s alleged  
14 reliance “to any alleged misstatement.” (Doc. 530 at 3, 4).

15           Rule 26(a)(1)(A)(i) requires a party to provide, in addition the address and  
16 telephone number of each individual likely to have discoverable information, the subject  
17 of the information likely to be provided. FED. R. CIV. P. 26. For documents,  
18 Subsection(a)(1)(A)(ii) requires either a copy of the document or a description by the  
19 document’s category and location. Furthermore, Subsection (a)(3)(A) requires a party to  
20 disclose with specificity each witness it intends to present, including those whose  
21 testimony is to be presented by deposition, as well as specific identification of each  
22 document or other exhibit intended to be presented. Finally, Subsection (e)(1)(B) requires  
23 a party who has made a disclosure to supplement or correct that disclosure as ordered by  
24 the court. Rule 37(c)(1) provides that “[i]f a party fails to provide information or identify  
25 a witness as required by Rule 26(a) or (e), the party is not allowed to use that information  
26 or witness to supply evidence on a motion, at a hearing, or at trial, unless the failure was  
27 substantially justified or is harmless.” FED. R. CIV. P. 37.

28           The information produced by the Trustee as of June 15, 2012 as to the 195

1 bondholders does not comply with the rudimentary obligations of Rule 26. While the list  
2 discloses the identity of individuals likely to have discoverable information, only for  
3 those bondholders who returned questionnaires can it plausibly said that the “subject” of  
4 their discoverable information has been disclosed. It is unclear what information could be  
5 offered by the fifty-three bondholders who failed to respond to the questionnaires, and the  
6 Trustee’s disclosure of them, without more, is in violation of Rule 26(a)(1)(A)(i).  
7 Therefore, in accordance with Rule 37(c)(1), the Trustee is barred from offering any  
8 testimony by those fifty-three bondholders.<sup>6</sup>

9 Furthermore, it is unclear how the twenty-seven bondholders that responded “No,”  
10 “Do Not Recall,” or left blank the questions asking if they relied on the OS or their  
11 brokers could provide information necessary to establish the elements of the claims of  
12 negligent misrepresentation or state securities violations. The Trustee has failed to  
13 disclose how the discoverable information possessed by these bondholders could support  
14 the claims it asserts on their behalf, thus violating Rule 26(a)(1)(A)(i) and Subsection  
15 (e)(1)(B). It is therefore precluded from offering any testimony relating to causation or  
16 damages by these twenty-seven bondholders.<sup>7</sup>

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17 <sup>6</sup> Specifically, the Trustee is precluded from offering testimony from the following  
18 bondholders: James C. & Christine B. Akers, Linda L. & William R. Beinke, Walter D.  
19 Bethoon & Addie M. Novaria–Bethoon, Keith & Barbara Bitzinger, C-2 Construction,  
20 Captive Investors, Mario J. Cirio, Sally L. Clark, Kenneth Cude, Pablo G. De Leon,  
21 Samuel Dempster, Arlene Dotts, Rita Echenique, Lennis & Richard Elston, Barry Evans,  
22 Bruce W. Ewing, Karl Richard Gerlitz & Anita Dabney Jones–Gerlitz, Lucinda M. &  
23 Kenneth E. Gerlitz, Betty T. Gleason, Fred Grapel, Marvin Groseth, Henry T. Hudson,  
24 Jr., Stephen Korey, Margaret Luebbers, Barbara Lurie, Billy G. Massey, Jeanine  
25 Mackintosh, Maxicor, Kathleen E. Milford, Edna F. Mlady, Patricia M. Mosbacher,  
26 David Ornoff, William E. & Nettie I. Postlewait, Charlotte & Jack Prescott, Lorraine  
27 Quayle, Amin Radparvar, Donald W. & Julia M. Rawn, Florence Reed, Norman  
28 Rothenbaum, Gloria Saiers, Daniel & Doris R. Sanchez, Mark Sanchez, Roland & Esther  
Sanchez, Betty F. Schonthal, Mortan & Susan Shane, Jack C. Silhavy, Kenneth Smith,  
Jack & Paula Strickstein, Dennis Swapp, Joan L. Titland, Herman R. Van Lier, Frances  
A. & Terrence L. White, and Emerson H. Young.

<sup>7</sup> Specifically, the Trustee is precluded from offering testimony on causation or damages  
from the following bondholders: Therese Anthony, Lisa M. Audlin, Beverly Bledsoe,  
Ronald T. Chehy, Emil & Theresa DePiero, Brian C. Donovan, Alvin Curtis Earls, Kester  
D. & Ann Haugh, Wendy A. Laude, Pauline Lovato, New Jersey Statewide Building  
Laborers Pension Fund, Operating Engineers Local #49 Health and Welfare, Bernard A.  
Patton, Neil R. & Gayle S. Potter, Production Sheet Metal Workers’ Local 10 Retirement  
Plan, Laurence V. Rosa, Lenore M. Sesner, Harold J. Smith, Byron & Dorothy A.  
Snyder, State Bank & Trust, United Food and Commercial Workers Union Local #789 &

1 Furthermore, the Court ordered the Trustee to identify and disclose “all witnesses  
2 and potential exhibits” on which it based its claims for negligent misrepresentation and  
3 state securities violations. (Doc. 495.) Aside from the 195 bondholders on the list and the  
4 five named plaintiffs, the Trustee did not identify with specificity the witnesses it intends  
5 to call in its June 15 disclosure. It only stated generally that it intended to rely on the  
6 deposition testimony and exhibits of the Defendants, third-party brokers, and the  
7 employees of each. (Doc. 542 at 4.) This violates Rule 26(a)(3)(A)(ii) and Subsection  
8 (e)(1)(B). To the extent that the Trustee failed to specifically identify the individuals it  
9 wishes to call as witnesses, it is precluded from calling them. Only the nine employees  
10 expressly named in the June 15 disclosure will be permitted to be called.<sup>8</sup>

11 With regard to documents, the Trustee has only disclosed a vague and general list  
12 of the types of documents it would like to use at trial. It has not come close to providing  
13 either copies or specific descriptions, by category and location, of those documents. The  
14 information provided lacks the specificity necessary to comply with the Court’s order or  
15 allow the Defendants to adequately conduct their own discovery. The single paragraph  
16 disclosed by the Trustee describing the documents it intends to rely on fails to meet the  
17 requirements of Rule 26(a)(1)(A)(ii), Subsection (a)(3)(A)(iii), and Subsection (e)(1)(B).  
18 As such, the Trustee is precluded from offering at trial any documents or exhibits in  
19 support of its state law claims on behalf of the individual bondholders that were not  
20 specifically and individually identified as of the June 15 deadline.

21 The less than adequate disclosure prior to the June 15 deadline, if countenanced,  
22 would result in an unfair and unwarranted shifting of discovery costs to Defendants due  
23 to the Trustee’s failure to meet its timely disclosure obligations under the rules. As such,  
24 rather than placing the burden on Defendants to depose the 195 listed bondholders or the  
25 various unidentified employees described by the Trustee in its June 15 disclosure, the

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26 St. Paul Food Employees Health Care Fund, Vance & Bobbie G. Vaupel, Rosella  
27 Weissman, Ed C. Winthrop, Esther Bedford, Suzanne G. Johnson, and Lavina J. Lovitt.  
28 <sup>8</sup> Specifically, the Trustee will be allowed to call or offer the depositions of only Mary  
Piontek, Stina Wishman, Joseph Riley, John Gresham, Drew Kanyer, Charles Howell,  
Brett Kimes, Terry Forsberg, and Raye Kanzenbach. (See Doc. 542 at 4.)

1 Court will allow the Trustee until the end of the day on November 10, 2012, to disclose  
2 on a bondholder by bondholder basis the facts on which it intends to rely to establish each  
3 individual bondholder's claim, as such claims can be established by evidence that is not  
4 precluded by this order. The Court will, after the filing of this disclosure, schedule a  
5 status conference with the parties to determine the extent, if any, to which the discovery  
6 deadline may be extended to permit additional discovery on these claims.

7 Defendants contend that the claims of the remaining 114 bondholders identified by  
8 the Trustee should be denied because the questionnaire responses do not contain the  
9 specific broker recommendations and OS provisions upon which the bondholders  
10 allegedly relied. However, whether the Trustee is able to establish a genuine issue of  
11 material fact regarding each bondholder's reliance or causation is an issue that must be  
12 decided at summary judgment, not in a Rule 37 or Rule 41 motion. Moreover, with  
13 regard to the Trustee's A.R.S. § 44-1991 claim, "reliance upon a misrepresentation is not  
14 an element" of this statute. *Rose v. Dobras*, 128 Ariz. 209, 214, 624 P.2d 887, 892 (Ct.  
15 App. 1981). Rather, a plaintiff need instead prove "transaction causation," namely that  
16 "the violations in question caused the appellant to engage in the transaction in question."  
17 *Grand v. Nacchio*, 214 Ariz. 9, 19, 147 P.3d 763, 773 (Ct. App. 2006) (citations omitted).  
18 Accordingly, even if the Trustee has failed to produce sufficient evidence of reliance  
19 during the discovery period, its § 44-1991 claims may survive if the Trustee can show  
20 evidence creating a genuine issue as to whether Defendants' alleged misrepresentations  
21 caused particular bondholders to purchase the bonds. As stated above, the Trustee will  
22 have four weeks from the date of this order to set out the facts on which it will rely in  
23 making such claims that have not been precluded by this order.

#### 24 **CONCLUSION**

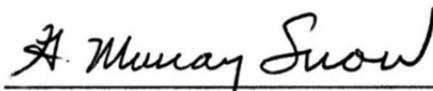
25 The Court will not dismiss the claims of the individual bondholders identified by  
26 the Trustee as of the June 15 deadline. The Trustee is, however, precluded from bringing  
27 claims on behalf of any bondholders which were not identified by that date. Furthermore,  
28 the Trustee is prohibited from offering testimony by the fifty-three listed bondholders

1 whose responses did not comply with Rule 26, and may not offer testimony relating to  
2 damages or causation from the twenty-seven bondholders who failed to provide  
3 meaningful responses as it relates to the reasons for their purchase of the bonds. The  
4 Trustee is also precluded from calling or using the depositions of any witnesses who were  
5 not specifically named in its June 15 disclosure. Finally, the Trustee is barred from  
6 offering any documents not specifically identified and described in its June 15 disclosure.  
7 The Trustee will have four weeks to set out the facts which make a prima facie case for  
8 each individual bondholder's claims, keeping in mind the above limitations prescribed by  
9 this Court.

10 **IT IS THEREFORE ORDERED** that Defendants' Joint Motion to Dismiss  
11 Claims of Non-Party Bondholders (Doc. 530) is **granted in part and denied in part.**

12 **IT IS FURTHER ORDERED** that Plaintiff Wells Fargo will disclose the specific  
13 facts on which it bases its claims for each individual bondholder on or before **November**  
14 **8, 2012.**

15 Dated this 11th day of October, 2012.

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17 \_\_\_\_\_  
18 G. Murray Snow  
19 United States District Judge  
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