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**United States District Court**  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 11-03620 WHA

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, STATIONARY ENGINEERS  
LOCAL 39 PENSION TRUST FUND, individually  
and on behalf of all others similarly situated,

Plaintiff,

**ORDER TO ELECT**

v.

THE BANK OF NEW YORK MELLON  
CORPORATION, THE BANK OF NEW  
YORK MELON, THE BANK OF NEW YORK  
COMPANY, INC., THE BANK OF NEW YORK,  
and THE BANK OF NEW YORK MELLON  
TRUST COMPANY, NATIONAL ASSOCIATION,

Defendants.

\_\_\_\_\_ /  
If plaintiff would prefer to file an amended complaint by January 5, 2012, and thereby incorporate new theories and drop any discarded theories, then the Court will allow it (subject to a fresh motion to dismiss) but, failing that, the Court will rule based on the actual pleading, disregarding any of the oral argument on the handout not actually pled. In a filing, plaintiff's counsel shall please elect one way or the other by **5 P.M. ON WEDNESDAY, DECEMBER 21, 2011.**

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Be mindful that the Court is very overworked these days (due to a series of MS-13 criminal prosecutions) and would prefer to address a pleading that represents plaintiff's best shot.

**IT IS SO ORDERED.**



Dated: December 20, 2011.

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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE