



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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COMPLAINT

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEMS VS. MOODY'S CORP et

001C02550649

Instructions:

Please place this sheet on top of the document to be scanned.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Street number, and address): Joseph J. Tabacco, Jr. (75484), Todd A. Seaver, James C. Magid (233043) BERMAN DeVALERIO 425 California St., Suite 2100 San Francisco, CA 94104 TELEPHONE NO.: (415) 433-3200 FAX NO.: (415) 433-6382 ATTORNEY FOR (Name): Plaintiff, CalPERS	FOR COURT USE ONLY
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, 94102 BRANCH NAME: Civic Center Courthouse (Civil Division)

CASE NAME: California Public Employees' Retirement System v. Moody's Corp., et al.
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CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: CGC-09-49024 JUDGE: DEPT:
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Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/W/D (23) Non-PI/PD/W/D (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input checked="" type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-PI/PD/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 1) negligent misrepresentation 2) negligent interference w/ econ advantage

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 9, 2009
 Joseph J. Tabacco, Jr. _____
 (TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

<p style="text-align: center;">NOTICE</p> <ul style="list-style-type: none"> • Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions. • File this cover sheet in addition to any cover sheet required by local court rule. • If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding. • Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.
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FILED
Superior Court of California
County of San Francisco

JUL 9 2009

GORDON PARK-LI, Clerk
By: *[Signature]* Deputy Clerk

NO SUMMONS ISSUED CASE MANAGEMENT CONFERENCE SET

DEC 11 2009 - 9:00 AM

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA DEPARTMENT 212
10 COUNTY OF SAN FRANCISCO

11 CALIFORNIA PUBLIC EMPLOYEES'
12 RETIREMENT SYSTEM,

13 Plaintiff,

14 v.

15 MOODY'S CORP.,
16 MOODY'S INVESTORS SERVICE, INC.,
17 THE MCGRAW HILL COMPANIES, INC.,
18 FITCH, INC.,
19 FITCH GROUP, INC.,
20 FITCH RATINGS, LTD., and
21 DOES 1 THROUGH 100,

22 Defendants.

Case No. **CGC-09.490241**

**COMPLAINT FOR NEGLIGENT
MISREPRESENTATION UNDER
COMMON LAW AND CAL. CIV. CODE
§§ 1709 AND 1710 AND NEGLIGENT
INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE**

JURY TRIAL DEMANDED

1 Plaintiff, as defined below in paragraph 4, alleges the following upon personal knowledge
2 as to themselves and their own acts and upon information and belief as to all other matters.
3 Plaintiff's information and belief are based on the investigation of their undersigned counsel,
4 whose investigation continues. Many of the facts related to Plaintiff's allegations are known only
5 by the Defendants named herein, or are exclusively within their custody or control. Plaintiff
6 believes that substantial additional evidentiary support for the allegations set forth below will be
7 developed after a reasonable opportunity for discovery.

8 I. SUMMARY OF THE ACTION

9 1. This action arises from the defendant credit rating agencies' grant of their highest
10 credit ratings to three Structured Investment Vehicles ("SIVs") which, in 2006, plaintiff
11 California Public Employees' Retirement System ("CalPERS") acquired interests in by investing
12 a total of \$1.3 billion. The three SIVs, named Cheyne Finance LLC ("Cheyne"), Stanfield
13 Victoria Funding LLC ("Stanfield Victoria"), and Sigma Finance, Inc. ("Sigma"), collapsed in
14 2007 and 2008, defaulting on their payment obligations to CalPERS and resulting in hundreds of
15 millions, and perhaps more than \$1 billion, of investment losses for CalPERS.

16 2. SIVs were massive structured finance products which held billions of dollars of
17 assets and issued billions of dollars of debt. The Rating Agencies (as defined below in paragraph
18 8) were indispensable players in the structuring and issuance of SIV debt, which they
19 subsequently rated for huge fees paid by the issuers – "rating their own work" according to a
20 recent Securities and Exchange Commission ("SEC") Report highly critical of the Rating
21 Agencies. SIVs were opaque; the Rating Agencies were the only entities (other than those
22 running the SIV) with knowledge of what assets a SIV actually purchased. They gave the SIVs
23 purchased by CalPERS their highest credit ratings, and by doing so made negligent
24 misrepresentations to CalPERS and CalPERS' money manager agents, which have caused and
25 will cause CalPERS to suffer substantial investment losses.

26 3. The credit ratings on the three SIVs ultimately proved to be wildly inaccurate and
27 unreasonably high. The Rating Agencies' methods used to rate the SIVs and their underlying
28 assets were seriously flawed in conception and incompetently applied. Moreover, the SIVs,

1 which the Rating Agencies represented by their "AAA" credit ratings as most likely able to
2 withstand an economic depression, were structured with Rating Agency participation in a manner
3 that used certain flawed assumptions which ended up ensuring SIVs' collapse when a recession
4 actually occurred.

5 II. THE PARTIES

6 4. Plaintiff California Public Employees' Retirement System ("CalPERS") is the
7 largest state public pension fund in the United States and was established for the benefit of
8 California's public employees in 1932. CalPERS is a defined benefit retirement plan with assets
9 totaling approximately \$173 billion as of January 31, 2009. CalPERS manages retirement
10 benefits for more than 1.6 million California public employees, retirees and their families. As of
11 June 30, 2008, CalPERS provided benefits to 1,126,133 active and inactive members and 476,252
12 retirees.

13 5. Defendant Moody's Investors Service, Inc. is a division of Moody's Corp., a
14 Delaware corporation (collectively "Moody's"). Moody's provides credit ratings, research and
15 risk analysis to investors. Moody's also played an integral role in the structuring, issuance, and
16 continued rating of the three SIVs invested in by Plaintiff. Moody's also maintains offices
17 located at One Front Street, Suite 1900, San Francisco, California 94111.

18 6. Defendant The McGraw-Hill Companies, Inc. ("McGraw Hill"). is a New York
19 corporation, with several offices in California, including in San Francisco, California. Standard &
20 Poor's ("S&P"), is a division of McGraw-Hill providing credit ratings, risk evaluation,
21 investment research and data to investors. As detailed herein, S&P also played an integral role in
22 the structuring, issuance, and continued rating of the three SIVs invested in by Plaintiff. S&P has
23 offices located at Steuart Tower, Suite 1500, One Market, San Francisco, California 94105.

24 7. Defendant Fitch, Inc. ("Fitch"), and its affiliate, Defendant Fitch Ratings, Ltd.
25 ("Fitch Ratings") (collectively, "Fitch"), is a credit rating agency that has dual headquarters in
26 New York and London. Defendant Fitch Ratings is a part of Fitch Group, Inc. a subsidiary of a
27 French company, Fimalac, S.A. Defendant Fitch, Inc. has offices located at 650 California Street,
28 4th Floor, San Francisco, California 94108.

1 8. Defendant McGraw-Hill, inclusive of S&P, defendant Moody's, and defendant
2 Fitch, inclusive of Fitch Ratings, are collectively referred to herein as the "Rating Agencies" or
3 "Defendants."

4 9. The true names and identities, whether individual, associate or corporate, of the
5 defendants sued herein as Does 1-100 inclusive, and the full nature and extent of the participation
6 of the said Doe defendants in the activities and conduct on which this action is based, are
7 presently unknown to plaintiff, who prays leave to amend to allege the true names and identities,
8 and the extent of participation in the wrongful activities and conduct, when the same shall become
9 known.

10 **III. JURISDICTION AND VENUE**

11 10. Plaintiff CalPERS is an arm of the State of California, operating pursuant to the
12 California Constitution (Article 16, Section 17) and the California Government Code.

13 11. Each Defendant has sufficient contacts with California, or otherwise purposefully
14 avails itself of benefits from California or has property in California so as to render the exercise of
15 jurisdiction over each by the California courts consistent with traditional notions of fair play and
16 substantial justice.

17 12. Each Defendant maintains permanent offices in California and conducts substantial
18 amounts of business in the state.

19 13. Each Defendant, for example, rates the state of California's bond debt, as well as
20 the debt of many California municipalities and corporations.

21 14. Each Defendant is qualified to do business in California.

22 15. One or more of the Defendants also conducted phone calls with Plaintiff CalPERS'
23 agents, and made representations concerning the Cheyne, Stanfield Victoria and/or Sigma SIVs.

24 16. Venue is proper as each Defendant's California offices are located in San
25 Francisco County.

26 17. The amount in controversy exceeds the jurisdictional minimum of this Court.

27 18. This action is not preempted by the Federal Securities Litigation Uniform
28 Standards Act of 1998, Pub. L. No. 105-353 (1998) ("SLUSA"), because this Complaint only

1 asserts state law claims, and is not a class action, an action brought by a representative party, or an
2 action that seeks damages on behalf of more than fifty persons.

3 **IV. FACTUAL BACKGROUND**

4 19. Between February 2006 and November 2006, CalPERS invested approximately
5 \$1.3 billion in medium term notes ("MTNs") and commercial paper ("CP") issued by three SIVs:
6 Cheyne, Stanfield Victoria and Sigma. The notes and commercial paper were, like traditional
7 corporate bonds, promises to repay borrowed investment money at a determined rate of interest.
8 An investor decides to lend funds and accept the "IOU" in the form of a note or commercial paper
9 based almost solely on the perceived creditworthiness of the borrower. SIVs were corporations
10 with one business activity: issuing debt. Other than the Rating Agencies' evaluation and
11 subsequent credit rating of a SIV, an investor had no access to any information on which to base a
12 judgment of a SIV's creditworthiness.

13 20. At the time of CalPERS' purchases, the senior debt issued by Cheyne, Stanfield
14 Victoria and Sigma were rated AAA/A-1+ by S&P, and Aaa/P-1 by Moody's. Fitch rated Sigma
15 AAA. These credit ratings are the highest assigned by each agency for long-term debt.

16 **A. SIVs in General**

17 21. SIVs are a type of special-purpose entity. SIVs purchase mainly medium and long-
18 term assets, raising money to do so with issues of highly-rated short-term commercial paper and
19 medium term notes, as well as less highly-rated junior notes. A SIV profits from the leveraged
20 spread between the lower yields it pays for its funding and the higher yield it receives for the
21 maturing, underlying assets which it holds.

22 22. The assets which make up SIVs are typically represented in offering materials to
23 be mostly highly-rated asset-backed securities from many sectors: financial, auto loans, student
24 loans, credit card loans, home equity loans, mortgage-backed securities (both commercial and
25 residential), and other structured finance products like collateralized debt obligations ("CDOs")
26 and collateralized loan obligations ("CLOs").

1 23. In the cases of Cheyne, Stanfield Victoria and Sigma the underlying assets
2 consisted in large part of risky subprime mortgages, held in securitized form as residential
3 mortgage backed securities (“RMBS”), CDOs, and securitized home equity loans (“HEL”).

4 24. SIVs can be “sponsored,” or formed, by major commercial banks (so-called “bank-
5 sponsored SIVs”) or by other entities, such as investment or asset management companies (so-
6 called “nonbank-sponsored SIVs”). Sponsors may or may not provide liquidity support or invest
7 its own money in a portion of the capital structure. Cheyne, Sigma and Stanfield Victoria were
8 “non-bank sponsored” SIVs without the liquidity support of a major commercial bank.

9 25. SIVs also have an asset manager, usually the sponsoring institution, to provide
10 investment advice, funding and operational support. SIVs are “actively managed,” in that the
11 manager has the authority to buy and sell assets as long as they are in accordance with certain
12 limits (preordained in the documents which form and structure the SIV) on asset portfolio quality,
13 tenor, concentration of individual assets, ratings, as well as industrial and geographic
14 concentrations.

15 26. SIVs have a structural hierarchy of liabilities: CP and MTNs are senior in priority
16 to junior, medium-term debt, often called “capital notes.” In the event that the SIV experiences
17 any losses, it is the junior debt that will absorb the losses first.

18 27. SIV managers generally ran various structural tests, weekly or even daily, to
19 determine if the SIV possessed adequate capital, collateral, and liquidity. Ordinarily, SIVs were
20 structured to cover the largest five-to-ten day periods of maturities without selling assets held by
21 the SIV. In the event that one or more of these tests were breached, and not remedied within the
22 relevant cure period, this would constitute an “enforcement event” that would trigger the wind-
23 down of the vehicle.

24 28. The Rating Agencies rated the senior debt of all three SIVs here at issue (Cheyne,
25 Stanfield Victoria and Sigma) “AAA” or the equivalent until at least August 2007.

26 29. The Rating Agencies purported to base their ratings of SIVs on (a) the supposedly
27 high quality of the assets contained in the SIV; and (b) the structural mechanisms of SIVs, which
28

1 were supposed to ensure that a SIV would sell off its underlying assets in order to keep a
2 minimum threshold of capital, and thus keep noteholders' investments safe.

3 30. Approximately 28 SIVs have ever been created. The oldest dates back twenty
4 years to 1989. SIVs experienced a growth spike beginning in 2005, when eighteen SIVs were
5 created in the 2005-2007 time period. According to a former consultant for S&P, SIVs came to
6 be nothing more than a mechanism by which investment banks could move exposure to risky
7 assets off their balance sheets. In the consultant's view, SIVs were the "end of the road" for these
8 assets.

9 31. In a report published in January 2008, Moody's stated that "the entire SIV business
10 model is now widely acknowledged as unsustainable without restructuring."

11 **B. The Three SIVs: Cheyne, Stanfield Victoria and Sigma**

12 **1. The Cheyne SIV**

13 32. Cheyne Capital Management (UK) LLP, a private London-based hedge fund
14 management company, was founded in 1999. In 2005, it formed the Cheyne SIV. As of
15 September 6, 2007 it was reported that the value of its total portfolio was about \$8.8 billion.

16 33. Moody's and S&P rated Cheyne during its existence.

17 **2. The Stanfield Victoria SIV**

18 34. Ceres Capital, based in New York, was started in 1999 to run structured funding
19 vehicles, including SIVs. Stanfield Capital Partners LLC, another New York based firm, bought a
20 majority stake of Ceres Capital in 2002, the same year the firm launched the Stanfield Victoria
21 SIV.

22 35. Moody's and S&P rated Stanfield Victoria during its existence.

23 **3. The Sigma SIV**

24 36. Gordian Knot, a London-based investment management company founded in
25 1993, formed the Sigma SIV in 1995. Sigma evolved into what would be the historically largest
26 SIV before its collapse.

27 37. Moody's, S&P, and Fitch rated Sigma during its existence.

28

1 **C. The Rating Agencies' Structured Finance Boom**

2 38. In the last thirty years, the Rating Agencies' business has drastically changed.
3 Traditionally, investors paid a subscription fee to the Rating Agencies for access to published
4 ratings and analysis. Beginning in the 1970s, however, the Rating Agencies began to move to an
5 "issuer pays" model, whereby the Rating Agencies are paid by the issuers whose debt is receiving
6 the credit rating. Today, 95% of the agencies' annual revenue is from issuer fees.

7 39. *What* the Rating Agencies are rating has also changed. Traditionally, they rated
8 bonds issued by corporations, municipalities, sovereign nations – entities that were ongoing
9 concerns sensitive to market, economic and industry developments. To determine the risk to the
10 note-holder, their analysis emphasized the expected cash flow generated by the obligors' ongoing
11 business. A rated entity could do little to change their credit characteristics before or during the
12 rating process.

13 40. This was no longer the case beginning no later than 2000. The Ratings Agencies
14 became actively involved in the creation and ongoing operation of structured finance products like
15 SIVs. Indeed, not only did they help structure the Cheyne, Stanfield Victoria and Sigma SIVs
16 here in question, but they were also actively involved in the creation of the structured finance
17 assets held by SIVs, like RMBS and CDOs.

18 41. Structured finance was lucrative. S&P and Moody's earned three times more for
19 grading CDOs, for example, as they did from traditional corporate bonds.

20 42. Rating a typical SIV commanded \$300,000 to \$500,000 or more, and some fees for
21 rating SIVs climbed to the \$1 million level. Moreover, the SIV rating fee was on top of the fees
22 the Rating Agency already generated by assigning ratings to the SIV's underlying assets. What is
23 more, the fees were contingent on the SIV ultimately being offered to investors. This meant the
24 Rating Agencies had a contingent fee interest and thus every incentive to give high "investment
25 grade" ratings, or else they wouldn't receive their full fee.

26 43. Structured finance increasingly became Moody's dominate source of income. For
27 example, Moody's charged between \$200,000 and \$250,000 to rate a \$350 million mortgage pool.
28 By contrast, rating a traditional municipal bond of an equivalent size would have generated only

1 \$50,000 in fees. In 2005, structured finance generated \$715 million, or 41% of Moody's total
2 revenue. By the first quarter of 2007, structured finance accounted for 53% of Moody's revenue.

3 44. Moody's financial statements show that from 2000 to 2007, operating margins
4 averaged 53%. These margins outpaced those of Exxon and Microsoft. For five years in a row,
5 Moody's had the highest profit margin of any company in the S&P 500.

6 45. S&P charged comparable rates for its ratings as Moody's. For structured finance
7 deals, this meant as high as eleven basis points, compared with 4.25 basis points for corporate
8 bonds. The revenue S&P garnered from structured financed grew 800% from 2002 to 2006. In
9 2006, its revenues rose by 20% to \$12.7 billion, with almost half of that growth from increased
10 sales of structured finance ratings.

11 46. Though Fitch is the smallest of the Rating Agencies, it too brought in record
12 profits for rating structured finance products. Fitch charged 7-8 basis points to rate a CDO, more
13 than its 3-7 basis point fee to rate a traditional bond. Fitch reported that structured finance
14 accounted for 51% of its total revenue of \$480.5 million in the fiscal year that ended on
15 September 30, 2006. According to Forbes, before the subprime shock waves hit, Fitch had its
16 best year ever in 2007, earning \$240 million before interest and taxes, up 22% from the year
17 before, on revenue of \$1.1 billion, up 18% from the previous year.

18 **D. The Ratings Agencies' Active Role in Structured Finance**

19 47. As detailed above, and unlike their previous roles as independent raters, Rating
20 Agencies became an integral part of the issuance of SIVs and their underlying collateral like
21 RMBS and CDOs. The Rating Agencies no longer played a passive role, but would help the
22 arrangers structure their deals so that they could rate them as highly as possible. As former chief
23 Operating Officer of Moody's, Brian Clarkson said, "You start with a rating and build a deal
24 around a rating." With regard to structured finance products, Charles Calomiris, the Henry
25 Kaufman professor of financial institutions at Columbia University in New York, told
26 Bloomberg:

27 It's important to understand that unlike in the corporate bond market, in the
28 securitization market, the rating agencies run the show This is not a passive
process of rating corporate debt. This is a financial engineering business.

1 48. Because the Rating Agencies would not get their full fees unless the issuance of a
2 SIV or other structured finance product was completed and the target rating was attained, they
3 were highly incentivized to get deals done and the products marketed to investors.

4 49. This active role played by the Rating Agencies in participating in the structuring of
5 financial products like SIVs was seen as problematic by the SEC, which has since criticized the
6 practice as "in effect, rating their own work."

7 **E. Ratings Symbols**

8 50. Ratings reflect the particular rating agency's expert opinion of the underlying
9 financial strength of the security. Typically, ratings may take into consideration various factors,
10 but usually consider the issue of the likelihood of default. Ratings are based on the aggregate of
11 relevant factors, and are expressed in the form of combinations of letters indicating the relative
12 safety or risk of the security. In addition, "+" and "-" signs are employed to signify shades of risk
13 within a given rating score.

14 51. The ratings assigned to the MTNs and CP issued by the Cheyne, Sigma and
15 Stanfield Victoria SIVs and purchased by CalPERS are as follows:

Rating Agency	Symbol	Meaning
Moody's	Aaa	The highest quality; minimal credit risk; highest investment grade
Moody's	P-1	Issuers (or supporting institutions) rated Prime-1 have superior ability to repay short-term debt obligations
Standard & Poor's	AAA	The best quality borrowers, reliable and stable (many of them governments); highest investment grade
Standard & Poor's	A-1+	Obligor's capacity to meet its financial commitment on the obligation is strong
Fitch	AAA	Highest investment grade
Fitch	F1+	Obligor has superior ability to repay short-term debt

1 52. Using S&P's scale, ratings of "AA," "A," and "BBB" represent high credit quality,
2 upper-medium credit quality and medium credit quality, respectively. These are considered
3 "investment grade" ratings. Any instrument rated below BBB is considered below investment-
4 grade, or "junk bond."
5

6 **V. THE RATING AGENCIES' MISREPRESENTATIONS CONCERNING THE**
7 **THREE SIVS**

8 53. The Rating Agencies provided credit ratings for the MTNs and CP issued by
9 Cheyne, Stanfield Victoria and Sigma to the companies which offered the SIVs to investors.
10 CalPERS purchased \$1.3 billion at par value of these debt issues in the period February 2006 to
11 November 2006. The SIV issuers paid the rating agencies to assign the ratings. The ratings
12 appeared in (i) private placement memoranda ("offering materials"), (ii) on the Rating Agencies'
13 respective websites (at least briefly available in downloadable form), and (iii) in the mix of
14 information about the SIVs debt issues provided by financial reporting services such as
15 Bloomberg and Reuters. The initial ratings persisted with ongoing "surveillance" of the SIVs by
16 the Rating Agencies.

17 **A. Cheyne**

18 54. Moody's carried a rating of Aaa/P-1 on Cheyne at the time CalPERS acquired
19 Cheyne's CP notes. CalPERS relied on the rating.

20 55. According to Moody's, its ratings on Cheyne "address the likelihood that investors
21 will receive payments as promised" and "address the expected loss posed to investors in relation
22 to timely payment of interest (if applicable) and timely payment of principal at par on the final
23 legal maturity date." Moody's emphasized that its rating was based "primarily" on several
24 factors, including the "assets purchased" by Cheyne. Moody's reported that Cheyne was
25 structured to permit certain "sector concentrations" of structured finance assets. The structural
26 parameters permitted an asset mixture of up to 55% RMBS and 40% CDOs.

27 56. S&P carried a AAA/A-1+ rating on Cheyne when CalPERS acquired it. CalPERS
28 relied on the rating.

1 57. According to S&P, its ratings on Cheyne “address timely payment of interest and
2 principal” and are based principally on certain factors, including “[a]ppropriate asset and liability
3 portfolio composition.” To determine if Cheyne’s asset mixture was appropriate for the highest
4 credit rating, S&P reported:

5 A variety of different scenarios were analyzed Each scenario assumed
6 different asset and liability compositions with regard to the impact of stress ...
7 [including the] expected operating portfolios ... Standard & Poor’s is comfortable
8 that the minimum capital requirements ensure that under the tested scenarios the
9 senior liabilities will be repaid in full.

8 **B. Stanfield Victoria**

9 58. Moody’s carried a rating of Aaa/P-1 on Stanfield Victoria at the time CalPERS
10 acquired Stanfield Victoria MTNs. CalPERS relied on the rating.

11 59. According to Moody’s, its ratings on the Stanfield Victoria notes “address the
12 likelihood that investors will receive payments as promised.” Moody’s states that its rating is
13 based upon Stanfield Victoria’s “portfolio of assets and liabilities”

14 60. S&P carried a AAA/A-1+ rating on the Stanfield Victoria MTNs when CalPERS
15 acquired them. CalPERS relied on the rating.

16 61. According to S&P, its ratings “are based on Standard & Poor’s assessment of
17 [Stanfield] Victoria’s structure and capital adequacy” emphasizing the assets it contains. S&P
18 represented that it evaluated the default probabilities for the SIV’s assets and their probable
19 market losses, and was ensured that “under the scenarios tested, the senior liabilities would be
20 repaid in full.”

21 **C. Sigma**

22 62. Moody’s initially assigned Sigma a rating of Aaa/P-1, and carried that rating at the
23 time CalPERS acquired Sigma notes. S&P likewise rated Sigma AAA/A-1+. Fitch, too, rated
24 Sigma AAA. CalPERS relied on these ratings.

25 **VI. THE RATING AGENCIES’ REPRESENTATIONS CONCERNING CHEYNE,
26 SIGMA AND STANFIELD VICTORIA WERE UNTRUE BECAUSE THE
27 RATINGS WERE INACCURATE AND UNJUSTIFIABLY HIGH**

27 63. The Ratings Agencies did not have a reasonable ground for giving the SIVs their
28 highest AAA or equivalent rating for the reasons set forth below.

1 64. The Rating Agencies created or approved structural tests that supposedly made the
2 Cheyne, Stanfield Victoria and Sigma SIVs virtually impervious to default. The tests, however,
3 were critically flawed because they did not take into account the foreseeable scenario that the
4 SIVs would be unable to liquidate the assets in the SIVs' portfolios. Those who invested in SIVs,
5 such as public pension funds like CalPERS, would not continue to roll over or "finance" SIV
6 notes or CP if there was a sign of trouble, given their prudent nature as investors in safe, liquid
7 assets. The SIV managers, and the Rating Agencies, knew a ratings downgrade would doom the
8 SIV. Consequently, in relatively good macroeconomic conditions, the SIVs' structure held; in the
9 "bust" of a "boom and bust" cycle, the SIVs' structure consigned them to collapse.

10 65. The Rating Agencies used asset correlations in their mathematical and statistical
11 models that were insufficient to capture the risk of the SIVs given that the SIVs could, and did,
12 contain large concentrations of RMBS (made up of loans from the same geographic regions) and
13 CDOs. This concentration (or lack of diversification) made the SIVs more susceptible to losses
14 from any one kind of investment, such as RMBS and CDOs.

15 66. The Rating Agencies created or approved investment parameters that permitted the
16 SIVs' portfolios to become concentrated in assets that were of the same class, industry, and
17 geographic region. This concentration (or lack of diversification) made the SIVs more susceptible
18 to losses from the classes, industries, and geographic regions in which the SIV had invested.

19 67. The Rating Agencies created or approved investment parameters that were based
20 on the credit ratings of the assets. Thus the input for the SIV investment parameters was based on
21 the output of the Rating Agencies' faulty models they used to rate RMBS and CDOs, as described
22 below.

23 68. The Rating Agencies, who were only paid by the issuer if a deal was rated,
24 employed increasingly lax standards when they rated SIVs and underlying structured finance
25 assets such as RMBS and CDOs. They did so to ensure the SIVs could be successfully pedaled to
26 primarily institutional investors like CalPERS, thus permitting the Rating Agencies to be paid
27 their contingent fee. This conflict of interest led to the Rating Agencies giving high credit
28 rankings to increasingly riskier deals. The SEC recently described this inherent conflict of

1 interest in its Summary Report of Issues in the Commission Staff's Examinations of Select Credit
2 Rating Agencies published in July 2008 ("SEC Report"), and recommended the rating agencies
3 establish and enforce policies to prohibit it.

4 69. This competition between the Rating Agencies led to a market share war, which
5 deteriorated into a "race to the bottom" for standards of quality credit rating. The casualties were
6 the accuracy of the models.

7 70. The pressure can be seen in internal communications. In an internal S&P email, an
8 employee laments that they had "lost a huge Mizuho RMBS deal to Moody's due to a huge
9 difference in the required credit support level." He was told by the arranger that they lost the deal
10 because the credit required by S&P "was at least 10% higher than Moody's."

11 71. Even Raymond McDaniel ("McDaniel"), Moody's current Chief Executive
12 Officer, realized that the lowering of standards would lead to dire consequences. In a presentation
13 to Moody's board of directors in 2007, McDaniel stated that the market-share war had
14 undermined all three of the rating agencies work product. He also stated that:

15 The real problem is not that the market does underweights [sic] ratings quality but
16 rather that . . . it actually penalizes quality by awarding rating mandates based on
17 the lowest credit enhancement needed for the highest rating. **Unchecked,**
18 **competition on this basis can place the entire financial system at risk.**

18 72. Internal S&P documents reveal that even within the Company, the rating standards
19 for structured finance were openly mocked:

- 20
- 21 • An analyst at S&P, expressed concern that her firm's model did not
capture "half" of a particular deal's risk, but that "it could be structured
by cows and we would rate it."
 - 22 • Another analyst in the same agency's CDO group wrote to a senior
23 manager that the Rating Agencies were creating an "even bigger
24 monster- the CDO market. Let's hope we are all wealthy and retired by
the time this house of cards falters. ;o)" (computerized wink in
original).

25

26 73. With regard to rating the RMBS and CDO products that SIVs would often invest
27 in, according to the SEC Report, the Rating Agencies:

- 28
- Failed to disclose relevant rating criteria;
 - Did not have specific written procedures for the rating of RMBS and

1 CDOs;

- 2 • Had no rationale for deviations from their models and for rating
3 committee actions and decisions that made out-of-model “adjustments”
4 resulting in higher ratings; and
- 5 • Did not have specific policies and procedures to identify or address
6 errors in their models or methodologies.

7 74. The same SEC report also stated that the Rating Agencies failed to maintain
8 enough trained personnel to competently rate all the deals that were coming through the doors and
9 completely failed to maintain enough staff to monitor the deals they had previously rated.

10 According to the SEC Report:

- 11 • A document in a deal file described an outstanding issue as “poorly
12 addressed – needs to be checked in the next deal” and addresses the
13 question of weighted average recovery rate by writing “(WARR – don’t
14 ask ☺)” (computerized smiley face in original).
- 15 • An email from one Rating Agency said that their “staffing issues, of
16 course, make it difficult to deliver the value that justifies our fees” and
17 another said “[t]ensions are high. Just too much work, not enough
18 people, pressure from company, quite a bit of turnover and no
19 coordination of the non-deal ‘stuff’ they want us and our staff to do.”
- 20 • Another email said “[w]e ran our staffing model assuming the analysts
21 are working 60 hours a week and we are short on resources The
22 analysts on average are working longer than this and we are burning
23 them out. We have had a couple of resignations and expect more.”

24 75. In the same way that the Rating Agencies used inadequate asset correlation values
25 for SIVs, they also increasingly lowered the asset correlation values for CDOs. This means
26 models would not have predicted industry-wide negative trends, like depreciation of home value,
27 defaulting and delinquent mortgages. Given the higher concentration of RMBS (and thus lower
28 “diversity”) in the CDOs described above, this number should have been raised so as to increase
the correlation of the underlying assets by the Rating Agencies, not lowered.

76. With regard to rating RMBS deals, the Rating Agencies did not take into account
the deterioration of loan origination standards especially for sub-prime mortgage loans. It was not
until June 2007, well after the subprime crisis had begun, that Moody’s decided it should even
look at the individual loans and their origination standards in the mortgage pools it was rating.

1 77. The Rating Agencies also failed to differentiate between a first mortgage and a
2 “piggyback” second mortgage loan. A “piggyback” loan was a second loan taken out, usually
3 from a different lender, to finance the entire purchase of a property. The Rating Agencies failed
4 to recognize that whether or not there was a second “piggyback” loan would (1) render the first
5 lien loan far more risky, as the borrower has a second loan and 0% equity; and (2) render the
6 piggyback loan itself riskier. These critical factors impacted the creditworthiness of the three
7 SIVs sold to CalPERS at issue here, which turned out to have high concentrations of RMBS,
8 CDOs, and HEL.

9 78. The Rating Agencies also used the historical default rates for traditional mortgage
10 loans to assume what the loss rates would be for the current crop of subprime and exotic
11 mortgages. Moody’s used historical data going back to the 1960s and 1970s to determine the
12 default and delinquency rates on the new breed of riskier mortgages. As Mark Adelson, a former
13 managing director in Moody’s structured-finance division, remarked in a New York Times article,
14 it was “like observing 100 years of weather in Antarctica to forecast the weather in Hawaii.”
15 Frank Raiter, former Managing Director and Head of Residential Mortgage Backed Securities
16 Ratings at S&P, testified before Congress in late 2008 that a “consequence of continuing to use
17 outdated versions of the rating model was the failure to capture changes in performance of the
18 new non-prime rating products. As a result, expected loss estimates no longer provided the equity
19 necessary to support the AAA bonds.”

20 79. The Rating Agencies thus used inadequate models, premised on useless or
21 outdated data to structure and rate RMBS deals, which had severe effects for SIVs’ credit
22 worthiness. They also used fanciful asset correlation values in their CDO and SIV models. As a
23 result, the Ratings Agencies also allowed unreasonable amounts of concentration of underlying
24 assets in specific kinds of investments, such as RMBS and CDOs. This is the exact opposite of
25 the “diversification” that is normally recommended for highly rated and “safe” investments.
26 Moreover, the Ratings Agencies used their own ratings on the underlying assets, as a parameter to
27 gauge the credit worthiness of the SIV, thus using the faulty output of their RMBS and CDO
28 models as the input for their SIV models.

1 80. As a consequence of the foregoing, the Rating Agencies had no reasonable ground
2 for believing that the Cheyne, Stanfield Victoria and Sigma SIVs should carry their highest,
3 safest, credit rating at any time.

4 **VII. WITHOUT THE HIGH CREDIT RATINGS THERE WOULD HAVE BEEN NO**
5 **MARKET FOR SIVS, AND CALPERS WOULD NEVER HAVE COME TO**
6 **INVEST IN THEM**

7 81. High credit ratings were critical to the SIVs' existence. The high ratings enabled
8 SIVs to be promoted as means to generate stable financial returns, with exposure only to safe,
9 high-grade assets.

10 82. Cheyne, Stanfield Victoria and Sigma were not available for purchase by the
11 general investor community, but could only be sold to a specific class of investors. The three
12 SIVs were offered only via private placement as unregistered securities, exempt from registration
13 (and concomitant disclosure requirements) under SEC Rule 144A. By law, Cheyne, Stanfield
14 Victoria and Sigma could be sold only to those who were both "Qualified Institutional Buyers"
15 ("QIBs)" under Rule 144A and "Qualified Purchasers" ("QPs") pursuant to the 1940 Act
16 § 2(a)51(A). Public pension funds like CalPERS are one of the few types of investors who
17 qualify as QIBs and QPs.

18 83. Like CalPERS, most QIBs are well known to have policies restricting corporate
19 note purchases to those that are at the upper tiers of "investment grade" ratings. Consequently, if
20 the SIV notes were not rated "AAA" or as investment grade, the limited pool of investors who
21 could otherwise buy them would have been prevented from doing so, and there would have been
22 no market at all for SIVs.

23 84. Had Moody's and S&P not assigned the highest credit ratings to Cheyne, Stanfield
24 Victoria and Sigma, CalPERS would not have purchased their debt issues for its portfolio and
25 would not have suffered the related investment losses.

26 **VIII. CALPERS JUSTIFIABLY RELIED ON THE SIV RATINGS**

27 85. No amount of diligence by CalPERS could have given CalPERS actual knowledge
28 of (a) the actual conflicts of interest at the Rating Agencies and their effect on the quality of the
SIV ratings; (b) the race to bottom that gutted any legitimacy or assurance of competence in rating

1 SIVs and other structured finance products held by SIVs; and (c) what assets the SIV actually
2 contained – for example, that Cheyne contained 50% RMBS and CDOs, concentrated in sub-
3 prime exposure, in 2007.

4 86. Only the SIV manager and the Rating Agencies knew what assets made up
5 Cheyne, Sigma and Stanfield Victoria. The exact make-up of assets was treated as confidential,
6 lest anyone, even investors, learn CUSIP-level data of what was contained in the SIVs and be able
7 to copy it. CalPERS justifiably relied on the “AAA” ratings which persisted into 2007 and 2008,
8 even as alarm over subprime mortgages grew.

9 87. In fact, on July 20, 2007, just ten days after Moody’s had downgraded 431 RMBS
10 valued at \$5.2 billion, Moody’s released a report entitled “SIVs: An Oasis of Calm in the Sub-
11 prime Maelstrom.” In the report, Moody’s offered assurances that SIVs were structured to
12 weather the subprime crisis. According to Moody’s, the structure of SIVs “obviates the need to
13 liquidate large buckets of assets at potentially the worst period in the life of the vehicle.”
14 Moody’s was quickly proven wrong as this was exactly what happened, which permanently
15 impaired the SIVs and forced their collapse.

16 88. Not to be outdone, on August 15, 2007, S&P issued a report declaring that SIVs
17 were weathering the growing market turmoil well, reminding investors that SIVs’ short term notes
18 were rated as the highest investment grade.

19 **IX. DEFENDANTS OBJECTIVELY KNEW THEIR RATINGS OF CHEYNE,
20 STANFIELD VICTORIA AND SIGMA WOULD BE RELIED UPON BY A
21 NARROW CLASS OF INVESTORS**

22 89. The terms of the offering materials show that the Cheyne, Stanfield Victoria and
23 Sigma SIVs were marketed to a specific, narrow class of investors – QIBs and QPs, defined by
24 federal securities laws as that class of investors to whom unregistered securities may be offered.

25 90. The Rating Agencies participated directly in assembling the offering materials and
26 contributed to their content.

27 91. In addition, with respect to the Cheyne, Stanfield Victoria and Sigma SIVs, one or
28 more of the Rating Agencies communicated about the SIVs directly with the agent of CalPERS
which purchased the debt issues of the Cheyne, Stanfield Victoria and Sigma SIVs.

1 92. What is more, Moody's and S&P each participated in the formation of the offering
2 materials for the SIVs, typically via telephone conference calls with the issuers to help draft the
3 language in the offering documents.

4 93. The Rating Agencies, much like their role with RMBS and CDOs, helped set up
5 SIVs through the same "iterative" process with the issuers. The Rating Agencies would create or
6 approve investment parameters that mandated the type, geography, tenor, and size of the assets
7 that the SIV could contain.

8 94. In addition, the information used by Rating Agencies to rate SIVs was confidential,
9 non-public information: only the arrangers and the Rating Agencies ever actually knew what was
10 in a SIV's portfolio.

11 **X. THE DOWNGRADES AND DEMISE OF THE SIVS**

12 **A. The Collapse of Cheyne**

13 95. As early as July 31, 2007, the same time period that the Rating Agencies were
14 downgrading RMBS assets, approximately 50% of Cheyne's portfolio had direct exposure to sub-
15 prime mortgages, in the form of RMBS and home equity loans. A JP Morgan analyst said at the
16 time that Cheyne had the highest known concentration of real estate assets in any SIV.

17 96. Just two weeks later, on August 15, 2007, S&P issued its report stating that SIVs,
18 including Cheyne, were weathering the market disruption well and declared short term notes to be
19 the highest investment grade.

20 97. Just a week and a half after S&P's rosy report, on August 28, 2007, Cheyne
21 Capital Management sent S&P and Moody's a letter notifying them that Cheyne had breached its
22 "Major Capital Loss" test, an "enforcement event" which forced the vehicle to wind down. On
23 this news, S&P abruptly downgraded the credit rating on Cheyne's MTNs by six notches from
24 AAA to A-. It lowered the SIVs CP to A-2 from A-1 plus. According to a JP Morgan analyst
25 covering the CP market, "If the rating agencies have to downgrade six notches in a single day, it
26 undermines investor confidence. It is sort of hard to fathom what so much has changed in that
27 time and makes investors wonder whether the rating agencies were paying attention to what was
28 going on in the portfolio."

1 98. Moody's did not react until September 5, 2007, the day that Cheyne was forced
2 into receivership. Moody's reaction was mild. It placed Cheyne on a "review" for "possible
3 downgrade" in the medium term note program. Moody's said it took the action not only because
4 of the breach of the trigger and the "entering an irreversible wind-down mode," but also because
5 Cheyne had a concentration of its assets in 48% RMBS. In the same announcement, Moody's
6 announced it had "adapted its rating methodology."

7 99. On October 19, 2007, S&P cut the credit rating of all Cheyne issuances to "D,"
8 meaning in "default." In less than two months, S&P ratings of Cheyne fell from "AAA" to below
9 even "junk" status. Also on this date, S&P reported that Cheyne's portfolio consisted of 56%
10 RMBS, 6% CDOs of ABS, and 38% corporate CDOs and CMBS.

11 100. It was not until July 15, 2008, that Moody's downgraded Cheyne's European and
12 U.S. MTNs to Ca, based in part of "losses from a 'fire sale,'" stemming from the auctioning off of
13 Cheyne's assets.

14 101. Between July 15 and 23, 2008, approximately \$1.8 billion of Cheyne's portfolio
15 was auctioned. Approximately 21% of Cheyne investors decided to "cash out" after the auction
16 that paid them 55% of their original \$7 billion investment. The remaining assets have now been
17 sold to Goldman Sachs into a new vehicle, the Gryphon pass-through Notes.

18 **B. The Collapse of Stanfield Victoria**

19 102. On October 31, 2007, S&P downgraded Stanfield Victoria's senior debt to AA
20 from AAA.

21 103. On, December 21, 2007, Moody's downgraded senior debt ratings of Stanfield
22 Victoria from Prime-1 to Not Prime, and the European and U.S. MTNs from Aaa/Prime-1 to
23 Baa3/Not Prime.

24 104. According to Moody's the Stanfield Victoria portfolio consisted of 28% CDOs
25 (including 10% CDO of ABS), Financials 21%, CMBS 16%, prime US RMBS 15%, Non Prime
26 US RMBS 5%, ABS 11% and monocline wrapped RMBS, CDO of ABS and home equity loans
27 4%.

28 105. On January 7, 2008, S&P cut Stanfield Victoria 13 levels to junk, from AA to B-.

1 106. On January 14, 2008, S&P cut Stanfield Victoria to D, the lowest ranking, due to
2 its “technical default” when it failed to pay CP that matured on January 10. S&P further stated
3 that Stanfield Victoria’s portfolio included a high concentration of CDOs involving “corporate,
4 residential, and commercial real estate exposure.” Senior investors had until January 17 to decide
5 whether they want to liquidate a percentage of its portfolio equal to their share of debt.

6 107. On April 17, 2008, Ceres Capital, the owners of Stanfield Victoria, filed for
7 Chapter 11 bankruptcy protection.

8 **C. The Collapse of Sigma**

9 108. From its inception until 2007 Sigma was given the highest ratings by all three
10 Rating Agencies. It was not until December 18, 2007 that S&P even put Sigma on “negative
11 outlook.” S&P noted that Sigma’s debt was not on CreditWatch Negative.

12 109. On January 8, 2008, Gordian Knot announced that it would not renew its ratings
13 contract with Fitch.

14 110. On January 28, 2008, Fitch withdrew its AAA grade on the \$34 billion of debt sold
15 by Sigma. Fitch said it could no longer rate Sigma because Gordian Knot was no longer willing
16 to provide information.

17 111. On February 27, 2008, Moody’s put Sigma’s senior notes on review for
18 downgrade. Moody’s cited concerns about the lack of any market value or ratings-based
19 enforcement triggers. Moody’s also stated that Sigma’s portfolio is 45% Aaa-rated and 43% Aa
20 rated, and has “limited exposure to ABS CDO and monoline wraps, and has no direct exposure to
21 US subprime RMBS.” Moody’s said review could result could downgrade long-term rating to the
22 double-A range and the short-term to P-2.

23 112. On April 4, 2008, Moody’s downgraded Sigma’s MTNs from Aaa to A2, and U.S.
24 CP was downgraded Prime-1 to Prime-2. Moody’s said the 5-notch downgrade, which skipped
25 the double-A range, was due to continuing uncertainties concerning Sigma’s ability to absorb
26 further deterioration in Sigma’s asset prices.

27 113. On April 8, 2008, S&P cuts Sigma’s long-term debt rating three notches from
28 AAA to AA-.

1 114. September 12, 2008, S&P downgraded Sigma's long-term senior debt two levels
2 from AA- to A. Sigma was, at this point, the last surviving SIV.

3 115. On October 1, 2008, Sigma announced that it would cease trading and may appoint
4 a receiver in a wind down.

5 116. On December 1, 2008, Moody's downgraded Sigma to C from Ca.

6 117. On December 4, 2008, it was reported that Sigma received bids of about \$306
7 million for a pool of bank debt and structured bonds with a face value of about \$2 billion.
8 Bloomberg also reported that creditors who held bonds due after October 23, 2008 might not
9 recover anything after the company's assets were liquidated.

10 **FIRST CAUSE OF ACTION**
11 **(NEGLIGENT MISREPRESENTATION)**
12 **(COMMON LAW AND CAL. CIVIL CODE §§ 1709 AND 1710)**
13 **(Against All Defendants)**

14 118. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs,
15 inclusive, as if fully set for the herein.

16 119. This is a claim for negligent misrepresentation against the Rating Agencies.

17 120. The Rating Agencies assigned untrue, inaccurate, and unjustifiably high credit
18 ratings to the senior debt of the SIVs named Cheyne, Stanfield Victoria and Sigma.

19 121. These credit ratings were false at the time they were initially assigned, and
20 continued to be false during the existence of the SIVs.

21 122. These false and misleading ratings were communicated to Plaintiff via the offering
22 materials of the notes Plaintiff invested in, the Rating Agencies' respective websites, through
23 financial reporting services, and directly to CalPERS authorized agent, and were relied upon by
24 CalPERS.

25 123. The Ratings Agencies knew at all times that their SIV ratings would be relied upon
26 by the same qualified institutional buyers and qualified purchasers, such as CalPERS, to which
27 the SIVs were marketed. Accordingly, the Rating Agencies owed a duty to CalPERS, which
28 relied on the ratings in purchasing the Cheyne, Sigma and Stanfield Victoria MTNs and CP.

1 law remedies; and

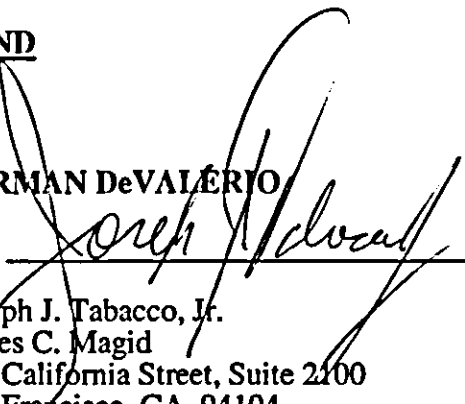
2 4. Awarding such other relief as this Court may deem just and proper.

3 **JURY DEMAND**

4 Plaintiffs demand a trial by jury.

5 Dated: July 9, 2009

6 **BERMAN DeVALERIO**

7 By:  _____

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