

**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

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and on behalf of all others  
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of all others similarly situated,  
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No. 10-15934

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

ORDER

Filed September 21, 2012

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**ORDER**

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.