

**FILED**

**FOR PUBLICATION**

SEP 21 2012

**UNITED STATES COURT OF APPEALS**

MOLLY C. DWYER, CLERK  
U.S. 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.