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ORIGINAL FILED

MAR 10 2014

Sherri R. Carter, Executive Officer/Clerk
By: Nancy Navarro, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY, a
Massachusetts Life Insurance Company

Plaintiff,

vs.

ANGELO MOZILO, DAVID SAMBOL,
ERIC SIERACKI, RANJIT KRIPALANI,
and DOES 1-100,

Defendants.

Case No.: BC482950

[REDACTED] ORDER SUSTAINING
DEFENDANTS' DEMURRER WITH 30
DAYS LEAVE TO AMEND

Hearing Date: March 10, 2014
Time: 11:30 a.m.
Dept.: 322

This is an action against four former officers and/or directors of Countrywide Financial Corp. ("Countrywide") for alleged violations of Massachusetts' Blue Sky law. In its Complaint, Plaintiff Massachusetts Mutual Life Insurance Co. ("MassMutual") alleges that in 2005 and 2006, it paid more than \$300,000,000 to purchase 13 residential mortgage-backed securities from Countrywide, relying on offering materials that falsely represented Countrywide's underwriting practices for the underlying residential mortgage assets. Defendants demur to the Complaint.

1 The Court SUSTAINS the Demurrer WITH LEAVE TO AMEND because the facts
2 alleged in the Complaint and conceded by Plaintiffs reveal that this action is untimely as a
3 matter of law. As explained more fully below, Plaintiff essentially admits that, by
4 February 14, 2008, a reasonable person was on notice of the true nature of Countrywide's
5 underwriting practices. Applying Massachusetts' four-year statute of limitations, the April
6 20, 2012 Complaint reveals, on its face, that it was untimely filed. Plaintiffs' 2011 suit
7 against the same Defendants in Massachusetts federal court does not equitably toll the
8 statute of limitations. That doctrine cannot relieve MassMutual of its mistaken decision to
9 sue in a court that could not exercise personal jurisdiction over Defendants.

10
11 This Court cannot construe Massachusetts' powers of equitable tolling or its saving
12 statute against Defendants who are not subject to jurisdiction in Massachusetts. Moreover,
13 the Massachusetts saving statute only applies to common law claims identified in the
14 statute. Because the Court sustains the demurrer on these grounds, it does not address
15 Defendants' alternative grounds for demurrer.¹

16
17 **I. Factual and Procedural Background.**

18
19 MassMutual's initial action against these Defendants and Countrywide Financial
20 Corporation was filed on September 1, 2011 in the federal district court in Massachusetts
21 and alleged violations of the Massachusetts "Blue Sky Law" (also known as the
22 Massachusetts Uniform Securities Act, or "MUSA;" Mass. Gen. Laws, Ch. 110A, § 410).

23
24
25 ¹ Although the Court does not reach Defendants' argument that MassMutual's alleged remedies fail as a matter of law,
26 the Court cautions Defendants that their cited authority for that argument, *Viterbi v. Wasserman* (2011) 191
27 Cal.App.4th 927, was superseded by *Moss v. Kroner* (2011) 197 Cal.App.4th 860. In *Moss*, the Second District Court
28 of Appeal did not "refuse to apply" *Viterbi* (Defendants Dem. 16, fn.12). The *Moss* court expressly repudiated the
holding in *Viterbi* as erroneously decided. Although the Court does not reach or address Defendants' contentions
regarding legislative jurisdiction, the court notes that Defendants' arguments are inconsistent with Judge Pfaelzer's
insightful distinction between the "minimum contacts" necessary to establish personal jurisdiction and the "sufficient
contacts" necessary for legislative jurisdiction to regulate an actor's substantive conduct under state blue sky laws. (*In re Countrywide Mortgage-Backed Sec. Litg.* (J.P.M.L 2012) 900 F.Supp.2d 1055, 1068-71.)

1 The federal court soon transferred that action to the *In re Countrywide Financial Corp.*
2 *Mortgage-Backed Securities Litigation* multidistrict litigation (“MDL”), pending before
3 the Honorable Mariana Pfaelzer. (*In re Countrywide Mortgage-Backed Sec. Litg.* (J.P.M.L.
4 2011) 812 F.Supp.2d 1380.)

5
6 On April 16, 2012 Judge Pfaelzer entered an order dismissing MassMutual’s claims
7 against the individual Defendants named in this action (Messrs. Mozilo, Sambol, Sieracki,
8 and Kripalani) with prejudice for lack of personal jurisdiction in Massachusetts where
9 MassMutual originally filed suit. (*In re Countrywide Financial Corp. Mortgage-Backed*
10 *Sec. Litg.* (J.P.M.L. 2012) 2012 WL 1322884, *7-9.) With regard to the remaining
11 defendants, Judge Pfaelzer applied a “reasonable investor” test to find that the action could
12 not be dismissed as time-barred under Massachusetts’ four-year statute of limitations:

13
14 “The court cannot, based solely on the FAC and judicially noticeable documents,
15 conclude that by August 31, 2007, a reasonably diligent investor should have linked
16 increased defaults and delinquencies in the loan pools underlying the Certificates
17 with both a failure to follow the underwriting and appraisal guidelines specified in
18 the Offering Documents and the possibility that the tranches purchase by
19 MassMutual would suffer losses. That is a link that a reasonable investor would
20 have needed to make in order to know that something material was amiss with the
21 Offering Documents for the particular tranches that are at issue in this case.” (Id. At
22 5).

23
24 On April 20, 2012, four days Judge Pfaelzer’s dismissal for lack of personal
25 jurisdiction, MassMutual brought the instant action against Defendants Mozilo, Sambol,
26 Sieracki, and Kripalani, all of whom are California residents. (See Comp., ¶¶ 13-16.) Like
27 the original federal action, this action alleges violations of the MUSA based on
28 MassMutual’s purchase of a number of mortgage-backed securities (“MBS”) from various

1 subsidiaries of Countrywide Financial Corp (“Countrywide”). (Comp., ¶¶ 1-2.)
2 MassMutual alleges that it purchased 13 MBS certificates for a total of \$304,997,401.58
3 between June 2005 and December 2006. (Comp., ¶ 45.) MassMutual further alleges that it
4 purchased the MBS based on public filings containing false statements or omissions of
5 material fact in violation of the MUSA. (Comp., ¶ 1.) In particular, MassMutual contends
6 that, contrary to Countrywide’s representations in the offering documents, Countrywide
7 abandoned and disregarded proper underwriting standards, improperly inflated appraisal
8 values and loan-to-value ratios for the underlying assets, and overstated the number of
9 owner-occupied homes in the underlying assets (as opposed to renter-occupied,
10 unoccupied, or investment properties). (See generally, Comp, ¶¶ 46-196.) MassMutual
11 alleges that Defendants, acting in their capacities as officers and directors at Countrywide,
12 were “control persons” at Countrywide subject to personal liability under the MUSA.
13 (Comp., ¶¶ 205-237, 239; Mass. Gen. Laws, Ch. 110A, § 410(b).)

14 15 II. Analysis

16
17 Neither side disputes that Judge Pfaelzer’s determination that the state of
18 Massachusetts lacks personal jurisdiction over Defendants is *res judicata* in this action,
19 which was filed by the same plaintiff against the same defendants and covers the same
20 subject matter. (*Sabek, Inc. v. Engelhard Corp.* (1998) 65 Cal.App.4th 992, 1000; see also
21 *MIB, Inc. v. Superior Court* (1980) 106 Cal.App.3d 228, 234-35 [prior finding that no
22 minimum contacts existed to confer personal jurisdiction gives rise to issue preclusion].)
23 However, while Plaintiffs contend that Judge Pfaelzer’s application of Massachusetts’
24 four-year statute of limitations to the claims against the remaining defendants is also *res*
25 *judicata*, Defendants argue that California’s two year statute of limitations properly
26 applies.

1 This Court finds that Judge Pfaelzer's order pertaining to the non-dismissed
2 defendants is not preclusive as against the individual Defendants over whom the federal
3 court had no jurisdiction. As the 11th Circuit Court of Appeals observed, "because it
4 lacked personal jurisdiction over the Defendants, the District Court ... was not a competent
5 court of jurisdiction" to determine any issues other than the question of personal
6 jurisdiction as to the Defendants in this action.² (*Drake v. Whaley* (11th Cir.2009) 355
7 Fed.Appx. 315, 317.)

8
9 Regardless which side is correct on this point, Plaintiffs' action is time-barred.

10
11 *A. MassMutual Failed to Plead Facts to Support Delayed Discovery*

12
13 As noted above, MassMutual alleges misrepresentations in connection with various
14 purchases of MBS certificates in and before December of 2006. (Comp., ¶ 47.) The
15 Complaint admits that MassMutual waited until September 1, 2011 (more than four years
16 after the last transaction) to sue Defendants in the Massachusetts federal district court.
17 (Comp. ¶ 26). MassMutual's April 20, 2012 Complaint does not allege any basis for late
18 discovery. It does not allege when MassMutual actually discovered that it suffered damage
19 as a result of wrongdoing or when a reasonable investor would have made that discovery.
20 Therefore, on its face, the April 20, 2012 Complaint was untimely filed.

21
22 MassMutual's argument that the Court should invoke equitable tolling to find that
23 its 2012 California Complaint was timely filed presumes that its initial Massachusetts
24 action was timely. But in California, a plaintiff must plead specific facts justifying late

25
26

² This is not to say that Judge Pfaelzer's discussion on the application of the MUSA's statute of limitations exceeded
27 her jurisdiction or was otherwise made in error. Judge Pfaelzer's April 16, 2012 order addressed numerous issues
28 relating to many other defendants over whom Judge Pfaelzer has personal jurisdiction. The Court merely construes
the portions of the April 16, 2012 order discussing issues other than personal jurisdiction as applying only to the
defendants over whom Judge Pfaelzer had personal jurisdiction.

1 discovery. Specifically, a Plaintiff seeking the benefit of the delayed discovery rule “must
2 specifically plead facts to show (1) the time and manner of discovery and (2) the inability
3 to have made earlier discovery despite reasonable diligence.” (*Fox v. Ethicon Endo-*
4 *Surgery, Inc.* (2005) 35 Cal.4th 797, 808 [internal quotation omitted].) “In assessing the
5 sufficiency of the allegations of delayed discovery, the court places the burden on the
6 plaintiff to show diligence; conclusory allegations will not withstand demurrer.” (*Id.*
7 [internal quotations omitted].) Whether this standard or Massachusetts’ “reasonable
8 investor” test applies, a plaintiff suing in California must allege specific facts justifying
9 late discovery in order to avoid the statutory bar. MassMutual’s Complaint fails to allege
10 any facts regarding its discovery.³

11
12 Apparently, MassMutual asks this court to presume that its initial action was timely
13 based on Judge Pfaelzer’s various determinations in other actions as to when a reasonable
14 person would have discovered the alleged wrongdoing. For example, Judge Pfaelzer found
15 in *Stichting Pensioenfonds ABP v. Countrywide Financial Corp.* (J.P.M.L 2011) 802
16 F.Supp.2d 1125, that “[t]he widespread public press coverage combined with the filing of
17 the shareholder suits in August 2007, the *Ark. Teachers Ret. Sys.* action in November 2007,
18 and the *New York City Emp. Ret. Sys.* action in January 2008 were enough to alert a
19 reasonable person to wrongdoing in Countrywide’s loan origination business” no later than
20 February 14, 2008. (*Id.* at 1140; see also (*In re Countrywide Financial Corp. Mortgage-*
21 *Backed Sec. Litg., supra*, 2012 WL 1322884, *3 [“In *Stichting* ... the Court found that
22 inquiry notice was triggered at least by February 14, 2008.”].) However, Judge Pfaelzer’s
23 selection of February 14, 2008 as the *latest* date for reasonable discovery was necessarily
24 keyed to the timeline at issue in that case. It was not a finding for all parties and all cases
25 or a finding that a reasonable person was not on inquiry notice sooner than that.

26
27
28 ³ MassMutual concedes that the clock on the statute of limitations would have run during the four days between April
16, 2012 when Judge Pfaelzer dismissed the claims against Defendants and April 20, 2012 when MassMutual filed the
instant action.

1
2 In California, a plaintiff has to plead facts justifying its late discovery so that the
3 court may make a determination on the statute of limitations specific to the allegations in
4 the Complaint. MassMutual's failure to affirmatively plead specific facts justifying its
5 delayed discovery requires this court to sustain the demurrer.

6
7 B. Under California Law, MassMutual's Federal Action Provides No Basis for
8 Tolling

9
10 Assuming, for purposes of argument, that Plaintiffs' initial federal court filing was
11 timely, the Court finds that the demurrer must nevertheless be sustained because
12 MassMutual's claims of equitable tolling fail as a matter of law.

13
14 To rule that a plaintiff may avoid the statute of limitations on grounds of equitable
15 tolling, the Court must find that "the fact that the plaintiff is left without a judicial forum
16 for resolution of the claim [is] attributable to forces outside the control of the plaintiff...."
17 (*Hull v. Central Pathology Service Medical Clinic* (1994) 28 Cal. App. 4th 1328, 1336
18 [citing *Wood v. Elling Corp.* (1977) 20 Cal. 3d 353, 361-62.) Applying this settled rule to
19 facts nearly identical to this case, the California Court of Appeal determined that a
20 plaintiff's mistaken decision to sue California defendants in a foreign forum that has no
21 jurisdiction over them provides no justification for equitable tolling.

22
23 In *Gordon v. Law Offices of Aguirre & Meyer* (1999) 70 Cal.App.4th 972, residents
24 of Arizona filed a legal malpractice action against a California law firm in an Arizona state
25 court. (*Id.* at 975-76.) After removal, the federal district court in Arizona dismissed the
26 action for lack of personal jurisdiction over the California defendants. (*Id.* at 976.) Two
27 weeks later, the plaintiffs reasserted their malpractice claims in a California state court.
28 (*Id.*) On demurrer, the plaintiffs argued that the statute of limitations was tolled during the

1 pendency of their earlier Arizona action. (*Id.*) The trial court rejected the argument and
2 sustained a demurrer without leave to amend. (*Id.*)

3
4 The Court of Appeal affirmed on two independent and alternative grounds. The
5 Court of Appeal first held that the express language of the applicable statute of limitations,
6 Code of Civil Procedure section 340.6, prohibits equitable tolling for any previously filed
7 actions. (*Id.* at 979-980.) The Court of Appeal alternatively held that the doctrine of
8 equitable tolling did not apply. (*Id.* at 980 fn.8 [“we note the doctrine of equitable tolling is
9 inapplicable here in any event”].) Citing *Hull, supra*, the Court of Appeal reiterated that
10 “[o]ne of the elements which must be present before the ... rule of equitable tolling will
11 apply is that plaintiffs are left without a judicial forum for resolution of their claims
12 through forces outside their control.” (*Id.* at 980 fn.8.) The *Gordon* Court denied relief,
13 finding that “plaintiffs here were not denied a trial on the merits due to any error of the trial
14 court, but because they mistakenly filed suit against California defendants in Arizona.”
15 (*Id.*)

16
17 *Gordon* is on all fours with this case. As in *Gordon*, MassMutual’s decision to seek
18 relief in Massachusetts against individual officers and directors residing in California was
19 an error of their own making. To paraphrase the *Gordon* decision, MassMutual was “not
20 denied a trial on the merits” in federal district court “due to any error of” Judge Pfaelzer.
21 (*Gordon v. Law Offices of Aguirre & Meyer, supra*, 70 Cal.App.4th at 980 fn.8.) The only
22 error was MassMutual’s misguided decision to initiate suit in a state that could not exercise
23 personal jurisdiction over the California Defendants. Under *Gordon*, the doctrine of
24 equitable tolling is “inapplicable.” (*Id.*)

25
26 MassMutual argues that *Gordon* is distinguishable for two reasons. First, it
27 contends that, “[i]n *Gordon*, unlike here, there were no rulings reaffirming the propriety of
28 personal jurisdiction in the original forum.” (Opp., p. 26.) Since Judge Pfaelzer likewise

1 “made no rulings” that Massachusetts had jurisdiction over the individual Defendants in
2 this case, this argument presents no basis for distinction. MassMutual’s additional
3 arguments, that the first action against the individual Defendants was justified because
4 Massachusetts had personal jurisdiction over *Countrywide* and that Mass Mutual acted
5 reasonably because it obtained jurisdiction against similar parties in unrelated cases, are
6 irrelevant. The point is that MassMutual could have sued and obtained jurisdiction over
7 Countrywide and the individual Defendants in California at the outset. Where a plaintiff
8 elects to file suit in a forum that lacks jurisdiction, causing the defendants to appear,
9 defend, and obtain a dismissal based on a lack of jurisdiction, there is no equity in tolling
10 the statute of limitations to allow plaintiff to correct the error by filing suit in a
11 jurisdictionally appropriate forum after the statute limitations has run.⁴

12
13 Plaintiff next contends that *Gordon*’s holding on equitable tolling is *obiter dictum*,
14 and not controlling authority. (Opp., p. 26 fn.12.) But the fact that the Court of Appeal
15 gave two alternative holdings does mean that one of them is *obiter dictum*. “It is well
16 settled that where two independent reasons are given for a decision, neither one is to be
17 considered mere dictum, because there is no more reason for calling one ground the real
18 basis of the decision than the other. The ruling on both grounds is the judgment of the
19 court and each is of equal validity.” (*Bank of Italy Nat. Trust & Savings Assn. v. Bentley*
20 (1933) 217 Cal. 644, 650.) In *Gordon*, the Court of Appeal held that the plaintiff’s error in
21 first bringing suit in a forum without jurisdiction over the defendants was an *independent*
22 ground for its conclusion that equitable tolling was inapplicable. The Court of Appeal
23

24 ⁴ Citing *Wood v. Elling Corp.*, *supra* MassMutual argues that it acted diligently in bringing suit in California almost
25 immediately after Judge Pfaelzer dismissed MassMutual’s claims against Defendants. (Opp., p. 26.) Diligence is only
26 one of three prerequisites for asserting equitable tolling under *Wood*. (*Hull v. Central Pathology Service Medical*
27 *Clinic, supra*, 28 Cal. App. 4th at 1336.) The requirement that the plaintiff’s delay must have been outside his or her
28 control is a *separate* and additional element. (*Id.*) The court dismissed the plaintiff’s claim in *Gordon* even though the
plaintiff filed suit in California within weeks of the Arizona dismissal. (*Gordon, supra*, 70n Cal.App.4th 976.)
MassMutual’s reliance on *Wood* is all the more curious in light of the Supreme Court’s cautionary observation: “If a
timely action dismissed without prejudice were, without more, to have the effect of tolling the statute of limitations
during the pendency of that action, an indefinite extension of the statutory period -- through successive filings and
dismissals -- might well result.” (*Wood v. Elling Corp.*, *supra*, 20 Cal.3d at 359-60.)

1 noted that, even assuming Code of Civil Procedure section 340.6 did not articulate a
2 special rule of equitable tolling for legal malpractice claims, the general doctrine of
3 equitable tolling was “inapplicable here *in any event*.” (*Gordon, supra*, 70 Cal.App.4th at
4 980 fn.8 [emphasis added].) This Court is bound by both holdings.⁵

5
6 C. California's Doctrine of Equitable Tolling Applies Here
7

8 MassMutual also attempts to defeat the controlling effect of *Gordon* by urging this
9 Court to apply Massachusetts' rules of equitable tolling. MassMutual points out that
10 “[n]ormally, when a foreign jurisdiction’s limitations period is found to apply, that
11 jurisdiction’s tolling laws will also apply.” (Opp., p. 21 [quoting *Hatfield v. Halifax PLC*
12 (9th. Cir.2009) 564 F.3d 1177, 1184.]

13
14 This Court is not persuaded that this is the “normal” case or that it can or should
15 apply the Massachusetts tolling rules. To begin with, this Court does not “find” that the
16 Massachusetts statute of limitations applies in this case. Instead, the Court assumes, for
17 the sake of argument, that the longer Massachusetts statute applies as a basis for holding
18 that the Complaint is nevertheless time-barred. The general rule is that when California is
19 the forum state and all defendants are residents of California, another forum state (like
20 Massachusetts) “has no interest in having its statute of limitations applied because here
21 there are no [Massachusetts] defendants and [Massachusetts] is not the forum.” (*Ashland*
22 *Chemical Co. v. Provence* (1982) 129 Cal.App.3d 790, 794.)

23
24 ⁵ There is a significant question whether this Court can invoke California’s doctrine of equitable tolling to benefit a
25 non-resident plaintiff. Although California allows “its resident [plaintiffs] to reap tolling benefits under its equitable
26 tolling doctrine, the same cannot be said for the non-resident” plaintiffs. (*Hatfield v. Halifax PLC* (9th. Cir.2009) 564
27 F.3d 1177, 1189.) “The law does not require that California courts become the depository for nonresident plaintiffs’
28 cases involving causes of action which are not recognized or would not be successful in those plaintiffs’ home states.”
(*Shiley Inc. v. Superior Court* (1992) 4 Cal.App.4th 126, 134.) With numerous provisions limiting California’s liberal
policies on the statute of limitations to California’s interests in protecting the rights of its residents (see, e.g., Code
Civ. Proc. § 361 [non-residents prohibited from taking advantage of a longer statute of limitations provided by
California law]), non-resident plaintiffs “certainly should not be permitted to take advantage of the state’s tolling
doctrine, which lengthens that limitations period.” (*Hatfield v. Halifax PLC, supra*, 564 F.3d at 1189.)

1 Even if Judge Pfaelzer's selection of MUSA's four-year limitations period had
2 preclusive effect here (but see (*Drake v. Whaley, supra*, 355 Fed.Appx. 315, 317), it cannot
3 be *res judicata* on the issue of tolling because she made no determination whether or not
4 Massachusetts' doctrine of equitable tolling applies. Under the principles articulated in
5 *Ashland*, this Court cannot apply Massachusetts' tolling provisions.

6
7 Contrary to Plaintiff's assertions, this is not a "normal" case where it makes sense to
8 "borrow" the tolling provisions from Massachusetts. Judge Pfaelzer has already
9 determined that MassMutual cannot proceed against the individual Defendants in
10 Massachusetts because Massachusetts does not have jurisdiction over them. "[A]pplying
11 [Massachusetts'] tolling statute to a case filed in California in these circumstances would
12 be absurd." (*Resurgence Financial, LLC v. Chambers* (App. Div. Santa Clara 2009) 173
13 Cal.App.4th Supp. 1, 6 [declining to apply Delaware's equitable tolling law to California
14 action against California defendants because Delaware lacked personal jurisdiction over
15 defendants].) To hold otherwise would empower a California court to enforce
16 Massachusetts' equity powers against California residents even though the Massachusetts
17 courts have no jurisdiction to exercise that power. Such a result is both "absurd" and
18 contrary to California law. (See *Ashland Chemical Co. v. Provence, supra*, 129
19 Cal.App.3d at 794; *Resurgence Financial, LLC v. Chambers, supra*, 173 Cal.App.4th
20 Supp. at 6.)

21
22 D. This Court Cannot Apply Massachusetts' Saving Statute

23
24 MassMutual also argues that under Massachusetts' so-called "saving statute" (Mass.
25 Gen. L., ch. 260 § 32), MassMutual was entitled to re-file its claim within one year after
26 the federal court dismissed its action for lack of personal jurisdiction. (Opp., p. 22 [citing
27 *Boutiette v. Dickinson* (Mass.Ct.App.2002) 54 Mass.App.Ct. 817, 818].) But as
28 Defendants correctly observe (Reply, p. 15), applying the Massachusetts saving statute to

1 toll claims against defendants over whom Massachusetts has no personal jurisdiction
2 would make no more sense than applying Massachusetts' rules of equitable tolling.

3
4 In any event, the Massachusetts' Supreme Court has made clear that "[t]he time
5 limits in [Massachusetts' saving statute] only apply to *common law* actions of contract or
6 tort" articulated in chapter 260 of the Massachusetts General Laws. (*Maltz v. Smith*
7 *Barney, Inc.* (Mass.1998) 427 Mass. 560, 562 [emphasis added].) The saving provision
8 does not apply to statutory claims not found in that chapter. (*Id.* [holding that the saving
9 statute "would not apply" to statutory action to vacate an arbitration award found in
10 different chapter of the Massachusetts General Laws].) The MUSA is a creature of statute,
11 not common law, and is set forth in chapter 110A of the Massachusetts general laws, not in
12 chapter 260. Therefore, even under Massachusetts law, the saving statute does not apply to
13 MassMutual's claims under the MUSA.⁶

14
15 **III. Conclusion**

16
17 Because the Complaint reveals, on its face, that the instant action is untimely as a
18 matter of law, the Court SUSTAINS Defendants' demurrer. The court also GRANTS the
19 parties' unopposed requests for judicial notice

20
21 Although the Court has, in this Order, endeavored to draw all inferences of fact and
22 law in favor of MassMutual (and the Court is hard-pressed to conceive of facts that
23 MassMutual can allege to avoid the statute of limitations), the Court exercises its discretion

24
25
26
27 ⁶ MassMutual's reliance on *Carrol v. City of Worcester* (Mass.Ct.App.1997) 628 Mass.App.Ct. 628, 629, for the
28 proposition that the saving statute is not limited to claims arising under chapter 260 (Opp., p. 22 fn.9) is misplaced. *City of Worcester* is an intermediate appellate decision predating *Maltz v. Smith Barney, supra*. The Massachusetts Supreme Court abrogated the holding in *City of Worcester* when it held the contrary a year later in *Maltz*.

1 to grant 30 days leave to amend, as is customary in an order sustaining a demurrer to an
2 initial pleading.

3
4 Dated: MAR 10 2014

 AMY D. HOGUE, JUDGE

 AMY D. HOGUE
 JUDGE OF THE SUPERIOR COURT

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