

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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: **Chapter 11**  
: **Case No. 08-12229 (MFW)**  
: **(Jointly Administered)**  
: **Hearing Date: March 4, 2010 at 11:30 a.m. (ET)**  
: **Objection Deadline: February 19, 2010 at 4:00 p.m. (ET)**  
-----X

*In re*

WASHINGTON MUTUAL, INC., et al.,<sup>1</sup>

**Debtors.**

**MOTION OF WASHINGTON MUTUAL, INC.  
FOR AN ORDER, PURSUANT TO SECTION 105(a) OF THE  
BANKRUPTCY CODE AND RULE 9019 OF THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE, APPROVING SETTLEMENT AGREEMENT  
BETWEEN WASHINGTON MUTUAL, INC. AND TBWA WORLDWIDE INC.**

Washington Mutual, Inc. ("WMI"), as debtor and debtor in possession (the "Debtor"), as and for its motion (the "Motion"), pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for approval of that certain Settlement Agreement (the "Settlement Agreement") dated on or about February 5, 2010, by and between WMI and TBWA Worldwide Inc. d/b/a TBWA\Chiat\Day ("TBWA"), a copy of which is attached hereto as Exhibit A, respectfully represents as follows:

**Jurisdiction**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

<sup>1</sup> The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



## **Background**

2. On September 26, 2008 (the “Commencement Date”), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On October 3, 2008, the Court entered an order, pursuant to Bankruptcy Rule 1015(b), authorizing the joint administration of the Debtors’ chapter 11 cases.

## **WMI’s Business**

3. Prior to the Commencement Date, WMI was a savings and loan holding company that owned Washington Mutual Bank (“WMB”) and such bank’s subsidiaries, including Washington Mutual Bank fsb (“WMBfsb”). WMI also has certain non-banking, non-debtor subsidiaries. Like all savings and loan holding companies, WMI was subject to regulation by the Office of Thrift Supervision (the “OTS”). WMB and WMBfsb, in turn, like all depository institutions with federal thrift charters, were subject to regulation and examination by the OTS. In addition, WMI’s banking and nonbanking subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation (“FDIC”).

4. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB and advised that the receiver was immediately taking possession of WMB (the “Receivership”). Immediately after its appointment as receiver, the FDIC sold substantially all the assets of WMB, including the stock of WMBfsb, to JPMorgan Chase Bank, National Association (“JPMC”) pursuant to that certain Purchase and Assumption Agreement, Whole Bank, dated as of September 25, 2008 (the “Purchase Agreement”).

5. WMI’s assets include its common stock interest in WMB, its interest in its non-banking subsidiaries, and more than \$4 billion of cash that WMI and its non-banking

subsidiaries (including WMI Investment) had on deposit at WMB and WMBfsb immediately prior to the time the FDIC was appointed as receiver. WMI is in the process of evaluating these and other assets for purposes of ultimate distribution to its creditors.

### **The Advertising Agency Agreement**

6. Prior to the Receivership and the Commencement Date, pursuant to that certain Advertising Agency Agreement, dated as of October 17, 2007 (the "Agency Agreement"), entered into between TBWA and WMB, for the benefit of itself and certain affiliates named in the Agency Agreement, TBWA, as agent for and on behalf of WMB, placed advertising ("WMB Pre-September Media") directly with certain media vendors (collectively, the "Media Vendors"). TBWA also engaged MediaSpace Solutions ("MSS") to provide newspaper planning, buying and placement with respect to WMB advertising, including WMB Pre-September Media.

7. During the 90-day period prior to the Commencement Date, TBWA received payments from WMB with respect to WMB advertising (the "WMB Payments"), related to amounts outstanding to Media Vendors and MSS for WMB Pre-September Media. TBWA was supposed to use the WMB Payments to satisfy these vendors' claims. TBWA is willing to make payment to the Media Vendors and MSS, to the extent of the WMB Payments. As of the date of this Motion, however, TBWA has not made full payment to the Media Vendors and MSS with respect to WMB Pre-September Media because TBWA is not certain whether the WMB Payments might be subject to a preferential transfer action or any other action under chapter 5 of the Bankruptcy Code. Consequently, notwithstanding the fact that WMI is not liable to the Media Vendors for amounts outstanding with respect to the WMB Pre-September Media, certain Media Vendors, including the Media Vendors set forth in Schedule A to the

Settlement Agreement (collectively, the “Identified Claiming Vendors”), have filed proofs of claim against WMI for such amounts.

8. In an effort to resolve the Identified Claiming Vendors’ claims, WMI engaged in discussions with TBWA, to provide TBWA comfort that WMI will not seek avoidance of the WMB Payments and, therefore, TBWA should release such funds to the respective vendors. These discussions culminated in the Settlement Agreement, pursuant to which (as further described therein), WMI (i) acknowledges that the WMB Payments do not represent transfers of the Debtors’ property, and (ii) agrees not to pursue any action against TBWA seeking disgorgement of such funds, in exchange for TBWA’s agreement to pay to the respective vendors all outstanding amounts with respect to the WMB Pre-September Media and assist WMI with obtaining claim withdrawals from the Identified Claiming Vendors.

#### **Relief Requested**

9. The Debtors seek entry of an order, pursuant to section 105(a) of the Bankruptcy Code and Rule 9019 of the Bankruptcy Rules, approving the Settlement Agreement.

#### **Basis For Relief**

10. Bankruptcy Code section 105(a) provides that, “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Bankruptcy Rule 9019, which governs the approval of compromises and settlements, provides that, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). A starting point in analyzing any proposed settlement agreement is the general policy of encouraging settlements and favoring compromises. See Myers v. Martin (In re Martin), 91 F.3d 389, 394 (3d Cir. 1996). The standard by which courts evaluate a proposed compromise and settlement are well

established. The United States District Court for the District of Delaware “has described the ultimate inquiry to be ‘whether the compromise is fair, reasonable, and in the interest of the estate.’” In re Marvel Entm’t Group, Inc., 222 B.R. 243, 249 (Bankr. D. Del 1998) (quoting In re Louise’s, Inc., 211 B.R. 798, 801 (D. Del. 1997)).

11. The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. In re World Health Alternatives, Inc., 344 B.R. 291, 296 (Bankr. D. Del. 2006). Under the well-established standard for consideration of the merits of a settlement, in determining whether to approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983) (quoting Newman v. Stein, 464 F.2d 689, 693 (2d Cir. 1972); see also In re World Health Alternatives, Inc., 344 B.R. at 296; In re Key3Media Group, Inc., 336 B.R. 87, 92-93 (Bankr. D. Del. 2005).

12. Applying the foregoing standard, WMI respectfully submits that approval of the Settlement Agreement is fair, reasonable and in the best interests of WMI and its estate and creditors. WMI submits that, because the WMB Payments do not constitute transfers of WMI’s property or transfers of interests in WMI’s property, the WMB Payments are not recoverable assets of the WMI estate. Accordingly, the release provided by WMI in the Settlement Agreement and, by extension of the agreement, TBWA’s payment of outstanding amounts owed to the Media Vendors and MSS from the funds constituting the WMB Payments, will not adversely impact the pool of assets available for distribution to WMI’s creditors. Conversely, approval of the Settlement Agreement will inure to the benefit of WMI’s estate. By

requiring TBWA to obtain claim releases from the Identified Claiming Vendors with which TBWA placed media directly, WMI will avoid the needless expense of filing objections to any of such Identified Claiming Vendors' claims against WMI, thereby reducing unnecessary drains on the WMI estate.

13. Based on the foregoing, WMI submits that cause exists to approve the Settlement Agreement as a settlement and compromise under Bankruptcy Rule 9019.

#### **Notice**


14. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion has been provided to: (i) the U.S. Trustee; (ii) counsel for the Creditors' Committee; (iii) counsel for TBWA; (iv) proposed counsel for the committee of equity holders; and (v) parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice need be provided.

#### **No Previous Request**

15. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE WMI respectfully request that the Court enter an order, in substantially in the same form as the proposed order attached hereto as Exhibit B, (i) granting the relief requested herein and (ii) granting WMI such other and further relief as is just.

Dated: Wilmington, Delaware  
February 5, 2010



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Mark D. Collins (No. 2981)  
Chun I. Jang (No. 4790)  
Andrew C. Irgens (No. 5193)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

– and –

Marcia L. Goldstein, Esq.  
Brian S. Rosen, Esq.  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

ATTORNEYS TO THE DEBTORS  
AND DEBTORS IN POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----X  
*In re* :  
 : **Chapter 11**  
 :  
 WASHINGTON MUTUAL, INC., et al.,<sup>1</sup> : **Case No. 08-12229 (MFW)**  
 :  
 : **(Jointly Administered)**  
 Debtors. :  
 : **Hearing Date: March 4, 2010 at 11:30 a.m. EST**  
 : **Objection Deadline: February 19, 2010 at 4:00 p.m. EST**  
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**NOTICE OF MOTION AND HEARING**

PLEASE TAKE NOTICE that, on February 5, 2010, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the **Motion of Washington Mutual, Inc. for an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure, Approving Settlement Agreement Between Washington Mutual, Inc. and TBWA Worldwide Inc.** (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be filed in writing with the Bankruptcy Court, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned counsel for the Debtors on or before **February 19, 2010 at 4:00 p.m. (Eastern Standard Time)**.

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<sup>1</sup> The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served and received and such objection is not otherwise timely resolved, a hearing to consider such objection and the Motion will be held before The Honorable Mary F. Walrath at the Bankruptcy Court, 824 Market Street, 5th Floor, Courtroom 4, Wilmington, Delaware 19801 on **March 4, 2010 at 11:30 a.m. (Eastern Standard Time)**.

**IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: February 5, 2010  
Wilmington, Delaware

**RICHARDS, LAYTON & FINGER, P.A.**



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Mark D. Collins (No. 2981)  
Chun I. Jang (No. 4790)  
Lee E. Kaufman (No. 4877)  
Andrew C. Irgens (No. 5193)  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

– and –

**WEIL, GOTSHAL & MANGES LLP**

Marcia L. Goldstein, Esq.  
Brian S. Rosen, Esq.  
Michael F. Walsh, Esq.  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

*Attorneys to the Debtors and Debtors in Possession*

**Exhibit A**

**Settlement Agreement**

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement Agreement") is entered into as of the <sup>5<sup>th</sup></sup> day of February, 2010, by and among TBWA Worldwide Inc., d/b/a TBWA\Chiat\Day ("TBWA"), and Washington Mutual, Inc. (the "Debtor").

WHEREAS, on September 25, 2008, the Federal Deposit Insurance Corporation (the "FDIC") was appointed as receiver for Washington Mutual Bank ("WMB"), a wholly owned subsidiary of the Debtor, and immediately took possession of WMB (the "Receivership");

WHEREAS, immediately following its appointment as receiver, the FDIC sold substantially all of the assets of WMB to JPMorgan Chase Bank, National Association ("JPMorgan Chase") pursuant to that certain Purchase and Assumption Agreement (Whole Bank), dated as of September 25, 2008 (the "Purchase Agreement");

WHEREAS, on September 26, 2008 (the "Petition Date"), the Debtor, which, prior to the Receivership, was the bank holding company of WMB, filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Proceeding");

WHEREAS, prior to the Receivership and the Petition Date, pursuant to a certain Advertising Agency Agreement, dated as of October 17, 2007 (the "Agency Agreement"), entered into between WMB, for the benefit of itself and certain affiliates named in the Agency Agreement (including the Debtor) and TBWA, TBWA placed advertising as agent for and on behalf of WMB ("WMB Pre-September Media") directly with certain media vendors (the "Media Vendors");

WHEREAS, prior to the Receivership and the Petition Date, TBWA engaged MediaSpace Solutions (“MSS”) to provide newspaper planning, buying and placement with respect to WMB advertising, including WMB Pre-September Media;

WHEREAS, during the 90-day period prior to the Petition Date, TBWA received payments from WMB with respect to WMB advertising (the “WMB Payments”), including fees payable to TBWA and media obligations owed to Media Vendors and MSS for WMB Pre-September Media;

WHEREAS, on October 9, 2008, the Debtor filed an Amended Creditor Matrix in the Proceeding identifying TBWA as a possible creditor of the Debtor;

WHEREAS, as of the date hereof, out of an abundance of caution TBWA has not made and does not desire to make full payment to Media Vendors and MSS with respect to WMB Pre-September Media unless it receives confirmation it will not be subject to a preferential transfer or any other action under chapter 5 of the Bankruptcy Code with respect to the WMB Payments in the Proceeding;

WHEREAS, certain Media Vendors including, without limitation, the Media Vendors set forth on Schedule A hereto (the “Claiming Vendors”), have filed proofs of claim against the Debtor for WMB Pre-September Media; and

WHEREAS, the Debtor and JPMorgan Chase, as successor to WMB, have requested that TBWA pay the Media Vendors and MSS with respect to WMB Pre-September Media to the extent paid by WMB, and TBWA is willing to make payment to the Media Vendors and MSS upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, TBWA and the Debtor (collectively, the “Settling Parties”) agree as follows:

1. The Debtor acknowledges and agrees that the WMB Payments do not represent transfers of the Debtor's property or an interest in the Debtor's property and it will not pursue or cause any other person or entity to pursue any action against TBWA or its affiliates under chapter 5 of the Bankruptcy Code or otherwise seeking disgorgement by TBWA or its affiliates of the WMB Payments.

2. Subject to Paragraph 3 below, within five (5) business days following entry of a final, non-appealable order by the United States Bankruptcy Court for the District of Delaware, Case No. 08-12229 (MFW) (the "Bankruptcy Court") approving this Settlement Agreement, TBWA shall pay to the Media Vendors and MSS all outstanding amounts determined to be payable to such entities with respect to the WMB Pre-September Media, to the extent of the WMB Payments (the "Media Payments").

3. With respect to any Claiming Vendor with which TBWA placed media directly that is either (i) identified on Schedule A hereto (namely, Cox Radio Houston; Cox Radio Inc. dba WSB AM, WSB FM, WBTS FM, WSRV FM, WALR FM; and KFOG Radio San Francisco) or (ii) otherwise identified to TBWA by Debtor in writing as a Claiming Vendor (in any case, an "Identified Claiming Vendor"), as a condition to making a Media Payment to such Identified Claiming Vendor, TBWA will request and require that such Identified Claiming Vendor execute and deliver to TBWA written agreement (a "Claim Release") that upon payment by TBWA it will promptly withdraw, with prejudice, the proof of claim filed against the Debtor in the Proceeding listed opposite such Identified Claiming Vendor's name on Schedule A hereto. Within five (5) business days following an Identified Claiming Vendor's execution and delivery of a Claim Release, TBWA will make payment to such Identified Claiming Vendor. TBWA will not make payment to any Identified Claiming Vendor with which TBWA placed

media directly with respect to outstanding WMB Pre-September Media that does not execute and deliver a Claim Release, unless otherwise agreed by Debtor. The Debtor will not unreasonably withhold its consent to such payment. Within five (5) business days following TBWA's payment to any Identified Claiming Vendor and MSS with respect to WMB Pre-September Media, TBWA will provide to Debtor evidence of payment to MSS and to such Identified Claiming Vendor and a copy of any Identified Claiming Vendor's Claim Release. TBWA will provide to Debtor evidence of payment with respect to other Media Vendors as Debtor may reasonably request from time to time.

4. Except as to the full and faithful performance of this Settlement Agreement, and upon TBWA's payment of the Media Payments to the Media Vendors and MSS, each Settling Party and its respective affiliates, including non-debtor affiliates, and their officers, directors, agents, representatives, attorneys, employees, heirs, predecessors, successors and assignees, do hereby completely release and forever discharge one another and their past and present affiliates, agents, representatives, officers, directors, employees, attorneys, successors and assigns from any and all claims, rights, demands, actions, obligations, liabilities, attorneys' fee claims and causes of action of any and every kind, nature and character whatsoever, known or unknown, which the parties may now have or have ever had against one another, past, current, and future related to (i) the WMB Payments and (ii) the Agency Agreement ("Released Claims").

Each Settling Party expressly waives any and all rights it may have under any applicable statute, doctrine or principle of law restricting the right of any person or entity to release claims that such person or entity does not know or suspect to exist at the time of executing a release, which claims, if known, may have materially affected such person's or such

entity's decision to give such release. In connection with this waiver and relinquishment, each Settling Party acknowledges that it is aware that it may hereafter discover facts currently unknown or unsuspected, or facts in addition to or different from those that it now knows or believes to be true. Nevertheless, each Settling Party intends that the release contained in this Paragraph 6 shall fully, finally and forever release each and every one of the Released Claims, whether known and unknown, suspected or unsuspected, fixed or contingent, that such Settling Party may have or acquire against any or all of the other Settling Parties.

In furtherance of such intention, the release contained in this Paragraph 4 shall remain in effect notwithstanding the discovery of existence of any such additional or different claims or facts relative thereto.

5. Notice of Settlement. Within five (5) business days of the execution of this Settlement Agreement, the Debtor shall file a motion or other notice with the Bankruptcy Court seeking the entry of an order approving this Settlement Agreement. Notwithstanding anything to the contrary herein, this Settlement Agreement is subject to the approval of the Bankruptcy Court pursuant to a final, non-appealable order.

6. Representations and Warranties. Each of the Settling Parties represents that it (i) has read and understands the scope and effect of each provision of this Settlement Agreement and has had the opportunity to consult with counsel for further explanation of the Settlement Agreement's terms, covenants, and provisions; (ii) has executed the Settlement Agreement freely, voluntarily, and with authority (subject to the Debtor's need to obtain Bankruptcy Court authorization to enter into the Settlement Agreement), intending to be bound thereby; (iii) has been duly authorized to enter into this Settlement Agreement; provided, however, that the Settlement Agreement shall not be enforceable against the Debtor or its estate

until an order is entered by the Bankruptcy Court; and (iv) has not sold, assigned, conveyed or otherwise transferred any claim or right of action or any right of any kind whatsoever against any other Settling Party that relates in any way to any of the Released Claims, and each Settling Party further agrees that it will not sell, assign, convey or otherwise transfer any such claims or rights at any time before the release in Paragraph 4 of this Agreement becomes effective. Debtor represents and warrants to TBWA that the designation "WaMu Group Corp." identified on the check details attached to certain checks received by TBWA with respect to WMB Pre-September Media is not an existing legal entity directly or indirectly owned by Debtor.

7. Costs and Fees. Each party will bear its own costs, attorneys' fees, and expenses incurred in connection with this Settlement Agreement and all steps necessary to effectuate the terms of this Settlement Agreement.

8. Entire Agreement. This Settlement Agreement constitutes the entire agreement among the Settling Parties on the subject matter hereof, and supersedes any and all prior and contemporaneous agreements and representations, whether written or oral.

9. Not an Admission. This Settlement Agreement is entered into solely for the convenience of the parties hereto. Neither this Settlement Agreement nor the fact of its execution will constitute any admission or acknowledgement of liability or wrongdoing on the part of any of the Settling Parties. The Settling Parties will not offer this Settlement Agreement or the fact of its execution into evidence in any proceeding other than a proceeding to approve or enforce or to effect this Settlement Agreement or any of its terms, including in any motion or other pleadings filed in the Proceeding.

10. Signatures and Effective Date. This Settlement Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which



will constitute one and the same instrument. This Settlement Agreement will become effective as soon as all parts of this Settlement Agreement have been executed by all of the Settling Parties and a complete set of original executed signature pages has been received by counsel for the Debtor, provided, however, that this Settlement Agreement shall not be enforceable against TBWA or the Debtor or its estate until an order has been entered by the Bankruptcy Court approving the Settlement Agreement.

11. Miscellaneous.

(a) This Settlement Agreement shall be binding on the Settling Parties' successors, assigns, subsidiaries and affiliates. Nothing in this Settlement Agreement shall be construed to create any rights enforceable by any party other than TBWA and the Debtor.

(b) The terms of this letter agreement, including the releases described herein, shall survive any assignment of any proof of claim filed by any Vendor to any third party.

*Remainder of page intentionally left blank*

WHEREFORE, the Settling Parties hereby acknowledge their agreement and consent to the terms and conditions set forth above through their respective signatures as contained below.

TBWA WORLDWIDE INC. d/b/a TBWA\CHIAT\DAY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WASHINGTON MUTUAL, INC.

By:  \_\_\_\_\_

Name: Charles Edward Smith

Title: Executive Vice President

WHEREFORE, the Settling Parties hereby acknowledge their agreement and consent to the terms and conditions set forth above through their respective signatures as contained below.

TBWA WORLDWIDE INC. d/b/a TBWA\CHIAT\DAY

By: Barbara Overlie

Name: Barbara Overlie

Title: CFO-LA

WASHINGTON MUTUAL, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SCHEDULE A

Claim Number	Vendor
80	Cox Radio Houston
262	Cox Radio Inc. dba WSB AM, WSB FM, WBTS FM, WSRV FM, WALR FM
508	The Tampa Tribune
698	Antelope Valley Press
701	BRV Inc. dba Ventura County Star
894	Denver Newspaper LLP
965	California Newspapers
1026	Cape Publications Inc. dba Florida Today
1132	Southcoast Newspapers Inc. dba North County Times
1259	KFOG Radio San Francisco
1563	LaFromboise Newspapers Inc dba The Chronicle
2622	The Dallas Morning News

**Exhibit B**

**Proposed Order**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

-----X  
: **Chapter 11**  
: **Case No. 08-12229 (MFW)**  
: **(Jointly Administered)**  
: **Re: Docket No. [ ]**  
-----X

**ORDER APPROVING SETTLEMENT AGREEMENT  
BETWEEN WASHINGTON MUTUAL, INC. AND TBWA WORLDWIDE INC.**

Upon the motion, dated February 5, 2010 (the "Motion"), of Washington Mutual, Inc. ("WMI"), as debtor and debtor in possession, for entry of an order, pursuant to section 105(a) of the title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure, approving that certain settlement and agreement, dated on or about February 5, 2010 (the "Settlement Agreement"), by and between WMI and TBWA Worldwide Inc. d/b/a TBWA\Chiat\Day (the "TBWA"), all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to those parties identified therein, and no other or further notice being required; and the Court having determined that the relief sought in the Motion is in the best interest of

<sup>2</sup> The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

WMI, their creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore, it is

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Settlement Agreement, a copy of which is attached hereto as Exhibit A, is approved in all respects; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: \_\_\_\_\_, 2010  
Wilmington, Delaware

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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE