

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

In re:	)	Chapter 11
WASHINGTON MUTUAL, INC., <i>et al.</i> ² ,)	
	)	Case No. 08-12229 (MFW)
)	
Debtors.	)	Jointly Administered
)	
)	
	)	Objection Deadline: 2/14/1013
	)	Hearing Date: 2/21/13 @ 11:30 a.m. (EST)
)	

**MOTION OF KIMBERLY CANNON FOR ORDER GRANTING LEAVE TO FILE
AMENDMENT TO PROOF OF CLAIM NO. 1248 OR, IN THE ALTERNATIVE,
ALLOWING KIMBERLY CANNON TO ASSERT ALTERNATE ARGUMENT
REGARDING CLAIM BASED ON WAMU SEVERANCE PLAN**

Claimant Kimberly Cannon (“**Claimant**”), by and through her undersigned counsel, submits this “Motion For Order Granting Leave to File Amendment To Proof Of Claim Or, In The Alternative, Allowing Kimberly Cannon To Assert Alternate Argument Regarding Claim Based On WaMu Severance Plan” (the “**Motion**”). In support of this Motion, Claimant represents as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 1334 and 157. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

RELIEF REQUESTED

2. This Motion is brought to ensure that Claimant is not barred from arguing all of Claimant’s legal theories with respect to her timely filed Proof of Claim, Claim Number 1248, in the amount of \$1,136,412.06 filed on March 12, 2009 (“**Claim**”).

² The Debtors in these cases are: (i) Washington Mutual, Inc. and WMI Investment Corp.



3. By this Motion, Claimant requests the entry of an order authorizing Claimant to amend her Proof of Claim or, in the alternative, allowing Claimant to assert an alternative theory of recovery based on the WaMu Severance Plan. Claimant's proposed amended proof of claim includes an alternate claim under the WaMu Severance Plan, which is sponsored by Washington Mutual, Inc. ("**WMI**"). Claimant's proposed amendment will not alter the claim amount. Claimant seeks solely to add language in her explanation attached to the Claim stating the following: "To the extent that it is determined that a change in control did not occur or WMI is found not to be responsible for obligations under the WaMu Change in Control Agreement, then Claimant is entitled to severance pay in the amount of \$153,462 pursuant to the WaMu Severance Plan." A true and correct copy of the proposed amended claim is attached hereto as Exhibit "1" and incorporated herein by this reference ("Amended Claim").

4. In the alternative, should the Court not allow the proposed amendment, the Claimant seeks the right to assert an alternate recovery theory based on the WaMu Severance Plan at the hearing on WMILT's objection to Claimant's Claim. This alternate recovery theory has already been disclosed to WMILT and this Court in the Opposition (defined below) filed by Claimant on or about September 4, 2012 [Docket No. 10586].

5. As counsel for WMILT has been unwilling to concede that the Claim includes the alternate theory of recovery and refuses to agree to an amendment to the Claim, Claimant seeks an order from this Court authorizing her to file the Amended Claim or allowing Claimant to argue this alternate theory of recovery at the hearing on his Claim.

SUMMARY OF RELEVANT FACTS

6. On September 26, 2008, WMI filed a petition for relief under chapter 11 of the Bankruptcy Code. The bankruptcy case was jointly administered with the case of WMI's affiliate Washington Mutual Investments, which was filed on the same day.

7. On or about January 30, 2009, the Court entered its order setting March 31, 2009 as the deadline for filing proofs of claim against WMI.

8. On or about March 12, 2009, Claimant filed Proof of Claim, No. 1248, in the amount of \$1,136,412.06 for “employee earned income and benefits.” Claimant was not assisted by counsel in the preparation and filing of her Claim. Attached hereto as Exhibit “2” and incorporated herein by this reference is a true and correct copy of the Claim.

9. Claimant’s breakdown of the amount of the Claim is attached to the Claim and states that Claimant is owed \$80,000 for her Special Bonus Agreement, \$51,043.39 from WaMu’s Supplemental Executive Retirement Accumulation Plan (SERAP), and \$1,005,368.67 from Claimant’s Change in Control Agreement. Attached to the Claim is Claimant’s Special Bonus Opportunity Letter from WaMu dated March 19, 2008 (“**WaMu Retention Agreement**”), Claimant’s account summary of her Supplemental Executive Retirement Accumulation Plan, and Claimant’s Change in Control Agreement (“**WaMu CIC Agreement**”).

10. On February 23, 2012, this Court entered its order approving the Seventh Amended Joint Plan of Reorganization (the “**Confirmation Order**”). The Confirmation Order provides that “[a]s of the commencement of the Confirmation Hearing, a Proof of Claim may not be filed or amended without the authority of the Court.” *See* Confirmation Order ¶ 45, [Docket No. 9759]. The Confirmation Order further provides that, “[n]otwithstanding that the Court may permit the filing or amendment of such a proof of Claim, the Debtors are not required to reserve Liquidating Trust Assets to pay or otherwise satisfy any such Claims.” *Id.*

11. On or about August 15, 2012, WMILT filed the “WMI Liquidating Trust Seventy Ninth Omnibus (Substantive) Objection to Claims” [Docket No. 10504] (“**Objection**”). By and through the Objection, WMILT among other things objected to Claimant’s Claim on, *inter alia*, the following grounds: (a) WMILT is not responsible for those claims arising from either the WaMu CIC Agreement or WaMu Retention Agreement because WMI allegedly was not a party such agreements – WMILT’s Wrong Party Argument; (b) WMILT is not responsible

for those claims arising under the WaMu CIC Agreement or the WaMu Retention Agreement because a change in control did not occur – WMILT’s No CIC Argument; (c) the allowed Claim must be reduced pursuant to the cap set forth in 11 U.S.C. §502(b)(7) –WMILT’s 502(b)(7) Cap Argument; and, (d) WMILT is entitled to a credit for any severance payments or other relevant benefits actually received by Claimant from JP Morgan Chase – WMILT’s Setoff Argument.

12. On or about September 4, 2012, Claimant filed “Kimberly A. Cannon’s Opposition to WMI Liquidating Trust’s Seventy-Ninth Omnibus (Substantive) Objection to Claims” [Docket No. 10586] (“**Opposition**”). In addition to addressing WMILT’s No CIC Argument, WMILT’s Wrong Party Argument, WMILT’s Setoff Argument, WMILT’s 502(b)(7) Cap Argument and WMILT’s Wrong Party Argument, the Opposition also states that in the event that WMILT prevails on its argument that no change in control occurred or that WMI is not obligated under the WaMu CIC Agreement, Claimant is entitled to severance from WMI under the WaMu Severance Plan. Opposition, ¶¶ 18 – 21.

13. As set forth in detail in the Opposition, under this alternate recovery argument, Claimant is entitled to a claim in the amount of \$153,462. *Id.* ¶21. This alternate claim amount is significantly less than the amount of the Claim. Thus, WMILT does not need to adjust the Liquidating Trust Assets to pay or otherwise satisfy the proposed Amended Claim.

14. The WaMu Severance Plan effective August 1, 2004 provides as follows:

Washington Mutual, Inc., has established the Washington Mutual Special Severance Plan (the “Plan”) to provide benefits to eligible employees of Washington Mutual, Inc., and its designated subsidiaries and affiliates (collectively, “Washington Mutual”) whose jobs are eliminated due to a restructure or downturn in business. The Plan is intended to be a welfare plan governed by the Employee Retirement Income Security act of 1974 (“ERISA”).

15. The WaMu Severance Plan Amended and Restate Effective January 1, 2008 preamble reads:

Washington Mutual, Inc. has established the WaMu Severance Plan (the "Plan") with the intention of providing benefits to Eligible Employees of Washington Mutual, Inc. and its Affiliates (the "Company"), in the event of job elimination. This document sets forth the basic terms that are applicable to all eligible

participants. Provisions that apply exclusively to eligible employees of acquired employees are set forth in appendixes to this document. The Plan is intended to be a welfare plan governed by ERISA and intended to constitute a single plan.

16. If a WaMu employee is a party to a Change in Control Agreement and receives payment under such Change in Control Agreement, such employee is not entitled to severance under the WaMu Severance Plan. Specifically, the WaMu Severance Plan provides that:

2.2 Exceptions. An Eligible Employee is not eligible to receive benefits under this Plan if he is eligible to receive benefits or payments from any other severance plan arrangement agreement or program or if he has received such payment within the last two years from the Company or any Acquired Companies.

17. With the Confirmation Order in mind, on or about December 4, 2012, Robyn Sokol, counsel for the Claimant, sent Mr. Brian S. Rosen and Mr. Lawrence Baer of Weil Gotshal & Manges LLP (“Weil”) a letter (the “**December 4th Letter**”) requesting that WMILT stipulate that the Claimant be permitted to amend the Claim for the sole purpose of adding an alternate theory of recovery – the very same theory raised in the Opposition. The December 4th Letter provided a detail description of the proposed amendment as well as case law in support of the request.

18. On or about December 12, 2012, Ms. Sokol received a response e-mail from Julio C. Guardian at Weil in which WMILT refused to enter into the proposed stipulation.

19. As WMILT is unwilling to stipulate to the proposed amendment or agree that Claimant may make the alternate argument for recovery under the WaMu Severance Plan, Claimant has filed the within Motion.

THE RELIEF REQUESTED IS APPROPRIATE UNDER THE FEDERAL RULES OF CIVIL PROCEDURE AND FIRMLY ESTABLISHED CASE LAW

A. AMENDMENTS TO PROOFS OF CLAIMS ARE LIBERALLY PERMITTED

20. The general rule regarding amendment of a proof of claim is as follows:

It is well established that amendments to proofs of claim are liberally allowed [citations omitted]. **Generally, amendments are allowed when the original claim provides notice of the existence, nature, and amount of the claim.**

Amendments are generally used to cure obvious defects, describe the claim with greater specificity or **plead a new theory of recovery on facts of the original proof of claim**. Post-bar date amendment should be scrutinized to ensure that the amendment is not a new claim. While courts allow post-bar date amendment to claim amounts, courts do not allow post-bar amendment to change status of the claim.

In re Orion Ref Corp., 317 B.R. 660, 664 (Bankr. D. Del. 2004) (emphasis added).

21. As the Federal Rules of Bankruptcy Procedure do not directly address amendment of a proof of claim, most Courts look to Federal Rule of Civil Procedure 15 (“**Rule 15**”) and apply the test set forth therein to determine whether to allow an amendment to a proof of claim. In re Channokhon, 465 B.R. 132 (Bankr. S.D. Ohio 2012); In re Xechem Int’l, Inc., 424 B.R. 836, 841 (Bankr. N.D. Ill. 2010); Midland Cogeneration Venture Ltd. P’ship v. Enron Corp., 419 F.3d 115, 133 (2d Cir. 2005); In re Enron Corp. (“Enron”), 298 B.R. 513, 521 (Bankr.S.D.N.Y. 2003); Gens v. Resolution Trust Corp., 112 F.3d 569, 575 (1st Cir. 1997); In re Stavriotis, 977 F.2d 1202, 1204 (7th Cir. 1992); Robert Farms, 980 F.2d 1248, 1251 (9th Cir. 1992); In re Spurling, 391 B.R. 783, 786 (Bankr. E.D. Tenn. 2008); In re J.S. II, L.L.C., 389 B.R. 563, 567 (Bankr. N.D. Ill. 2008); In re MK Lonbard Grp. I, Ltd., 301 B.R. 812, 816 (Bankr. E.D. Pa. 2003); Little v. Drexel Burnham Labert Grp., Inc., 159 B.R. 420, 425 (S.D.N.Y. 1993).

22. Rule 15 provides that “[t]he court should freely give leave when justice so requires.” Courts have a long established liberal policy that permits amendments to a proof of claim. *See* Bankr.R. 7015; Fed.R.Civ.P. 15; In re Franciscan Vineyards, Inc., 597 F.2d 181, 182 (9th Cir., 1979), *cert. denied*, 445 U.S. 915, 100 S.Ct. 1274, 63 L.Ed.2d 598 (1980). The crucial inquiry is whether the opposing party would be unduly prejudiced by the amendment. In re Wilson, 96 B.R. 257, 263 (9th Cir.BAP1988); United States v. Hougham, 364 U.S. 310, 316, 81 S.Ct. 13, 18, 5 L.Ed.2d 8 (1960). Furthermore, an amendment to a proof of claim will relate back to the timely filed proof of claim if the claims in the amendment arise from the same conduct, transaction or occurrence as required by Rule 15. *See generally* In re Xechem Intern., Inc., 424 B.R. 836 (Bankr. N.D. Ill. 2010).

B. THE AMENDED PROOF OF CLAIM SATISFIES THE REQUIRMENTS OF RULE 15

23. The United States Supreme Court in Foman v. Davis, 371 U.S. 178, 83 S. Ct. 227, 9 L.Ed. 2d 222 (1962), referred to several factors courts should analyze when confronted with a request for leave to amend, stating:

In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the appealing party by virtue of allowance of the amendment, futility of amendment, etc. – the sought relief should, as the rules require, be “freely given.”

Foman, 371 U.S. at 182.

24. The Third Circuit has employed the “Foman Factors” in determining whether a trial court properly granted or denied leave to amend a pleading. In re Burlington Coat Factory Securities Litigation, 114 F.3d, 1410, 1434 (3rd Cir. 1997) (listing five factors taken into account to assess the propriety of a motion for leave to amend: (1) undue delay, (2) bad faith, (3) dilatory motive, (4) prejudice, and (5) futility of amendment); Riley v. Taylor, 62 F.3d 86, 90 (3rd Cir. 1995) (adopting and applying the Forman factors; Grayson v. Mayview State Hospital, 293 F.3d 103, 108 (3rd Cir. 2002) (holding that a under FRCP 15(a), leave to amend “must be granted in the absence of undue delay, bad faith, dilatory motive, unfair prejudice, or futility of amendment.”); *see also* Shane v. Fauver, 213 F.3d 113, 115 (3rd Cir. 2000).

25. The following analysis of the “Foman Factors” as used by the 3rd Circuit shows that leave to amend the Claim should be granted in this case:

(a) Bad Faith.

26. There are no indicia of bad faith. The Claim contemplated reimbursement for severance, employee benefits and pension. *See* Exhibit “2.” Additionally, the Objection filed by WMILT raised an objection to the claim with respect to the component of the Claim based upon the WaMu Severance Plan. As a result, the Opposition specifically addresses the Objection and indicates that Claimant intends to defend her Claim in its entirety and to the

extent it is determined that Claimant does not hold an allowed claim arising from the WaMu CIC Agreement then Claimant shall pursue her severance claim under the WaMu Severance Plan. *See* Opposition, ¶¶ 18-21. In fact, the Supreme Court in Foman stated that “[i]f the underlying facts or circumstances relied upon by plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.” Foman at 182. The proposed Amended Claim is based on the same underlying facts and circumstances relied upon by Claimant in her Claim and asserted in the Opposition. *See* Opposition, ¶¶ 18-21. Claimant should be allowed an opportunity to test his Claim on the merits and should not be barred from raising an additional legal theory for recovery.

(b) Undue Delay.

27. There will be no undue delay occasioned by the filing of the Amended Claim or reservation of Claimant’s right to argue an additional theory of recovery based upon the original Claim. Discovery regarding the Employee Wage Claims is ongoing and the Written Requests propounded by WMILT inquire regarding the Claim and all legal theories and facts supporting the Claim. Claimant’s responses to the Written Discovery are not due until March 11, 2013. Thus, the Amended Claim will not require additional discovery or an extension of currently scheduled dates.

(c) Prejudice to Opposing Party.

28. The Amended Claim will not prejudice WMILT. As shown above, the underlying facts relied on in the Amended Claim are the same as in the original Claim. Furthermore, WMILT and its counsel were apprised numerous times that Claimant intends to pursue the alternative argument that he is entitled to severance under the WaMu Severance Plan if it is determined that a change of control has not occurred and/or that WMILT is not obligated to satisfy Claimant’s claims arising under the WaMu CIC Agreement. *See* Claim, Opposition and December 4th Letter.

29. WMILT will in no way be prejudice by the Amended Claim because the amendment does not require further discovery or a continuation of the currently scheduled dates. Furthermore, the Amended Claim does not increase the face amount of the Claim. As such, the only party that will be prejudiced is Claimant if the Court fails to allow Claimant to file the Amended Claim or argue its alternate recovery theory under the WaMu Severance Plan.

(d) The Amended Claim Is Not Futile.

30. The alternate argument for recovery with respect to the Claim is not futile. As set forth in the Opposition to Claim, Claimant was a party to the WaMu Severance Plan and the WaMu Severance Plan specifically provides for a payment to Claimant upon termination from Washington Mutual as long as Claimant is not entitled to a payment under Claimant's WaMu CIC Agreement.

(e) Previous Amendments.

31. There have been no previous amendments to the Claim.

(f) Dilatory Tactics by Claimant.

32. Claimant has exercised no dilatory tactics. Claimant submits that the Claim includes the alternate recovery theory as it specifically states that the basis for the claim is "employee earned income & benefits" *See* Exhibit "2." Moreover, this alternate theory of recovery was raised at the first available time – in the Opposition. Furthermore, Claimant by and through her counsel brought this issue to the attention of WMILT and apprised WMILT that it intended to pursue this alternate argument and requested that WMILT allow for this amendment to the Claim. Counsel for WMILT refused to stipulate to the amending of the Claim for the sole purpose of clarifying that Claimant may argue the alternative theory of recovery under the WaMu Serverance Plan. Rather, WMILT informed Claimant's counsel that a motion needed to be brought seeking an order from this Court authorizing the amendment. As the alternate legal theories have already been presented to the Court and WMILT at the earliest possible time, Claimant was not dilatory.

C. CLAIMANT’S PROPOSED AMENDMENT DOES NOT PREJUDICE WMILT AS IT MERELY ADDS AN ALTERNATIVE THEORY OF RECOVERY ARISING FROM THE IDENTICAL FACTS

33. The Claim provided notice that Claimant was pursuing claims arising out of her employment relationship with WMI. The amended proof of claim seeks the identical claim arising from the very same employment, employment agreements and benefits. The sole change in the Amended Proof of Claim is to include an alternate theory of recovery under the WaMu Severance Plan. *See* Exhibit 1.

34. A similar set of facts was decided by the Bankruptcy Court in Illinois in *In re Xechem International, Inc.*, 424 B.R. 836 (Bankr. N.D. Ill. 2010). In that case, a former employee of the debtor filed a timely claim for unpaid compensation. After the bar date, the former employee sought to amend his claim to include additional claims for severance compensation, indemnification, repayment of a loan to the company and interest on the loan. The amended proof of claim reasserted the original claims, although in different amounts. In fact, the amended proof of claim claimed an additional \$247,094.00 to the original amount of \$1,699,000. *Id.* at 842. The court found that those claims clearly involved the same core disputes as those in the original proof of claim, and thus related back. *Id.* at 845. As for the severance and indemnification claims, the court found that those claims arose from the parties' employment agreements and the debtor's bylaws and therefore arose from the same ongoing conduct, transaction, or occurrence as those in the original proof of claim. *Id.* The employee was permitted to file the amended proof of claim on all new theories, except for the loss of personal property. *Id.*

35. As the claim under the WaMu Severance Plan relate to the employment relationship and compensation owed to Claimant, it clearly relates to the original Claim. As such, Claimant’s proposed amendment relates back to the Claim and should be granted. In the

alternative, should the Court not allow the proposed amendment, the Claimant seeks the right to assert alternative recovery based on the WaMu Severance Plan, if necessary.

CONCLUSION

36. Based on the foregoing, Claimant requests that this Court allow her to file the Amended Claim and have it relate back to the timely filed Claim. In the alternative, the Claimant seeks a ruling from this Court that the Claimant has properly presented and preserved her alternate recovery theory in the Claim and Opposition and Claimant, therefore, may assert a claim for recovery under the WaMu Severance Plan, if it is determined that no change of control occurred and/or that WMI is not responsible for satisfaction of employee claims under the WaMu CIC Agreement.

Dated: January 31, 2013

PHILLIPS, GOLDMAN & SPENCE, P.A.

/s/ Stephen W. Spence

Stephen W. Spence, Esquire (#2033)
1200 North Broom Street
Wilmington, DE 19806
Telephone: (302) 655-4200
Facsimile: (302) 655-4210

and

EZRA BRUTZKUS GUBNER LLP
Robyn B. Sokol
21650 Oxnard Street, Suite 500
Woodland Hills, CA 91367
Telephone: (818) 827-9000
Facsimile: (818) 827-9099
Counsel to Kimberly Cannon

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

In re:	)	Chapter 11
WASHINGTON MUTUAL, INC., <i>et al.</i> ¹ ,)	
	)	Case No. 08-12229 (MFW)
)	
Debtors.	)	Jointly Administered
)	
	)	Objection Deadline: 2/14/1013
	)	Hearing Date: 2/21/13 @ 11:30 a.m. (EST)
)	

NOTICE OF MOTION AND HEARING

TO: WMILT; Counsel for WMILT; the Office of the United States Trustee for the District of Delaware; and any party requesting notice pursuant to Bankruptcy Rule 2002 through the CM/ECF system and all those appearing on the attached list.

On February 1, 2013, Claimant Kimberly Cannon filed the **Motion of Kimberly Cannon for Order Granting Leave to File Amendment to Proof of Claim No. 1248 or, in the Alternative, Allowing Kimberly Cannon to Assert Alternate Argument Regarding Claim Based on WaMu Severance Plan** (the “Motion”), a copy of which is attached hereto.

Objections, if any, to the relief requested in the Motion must be filed with the United States Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19807, on or before February 14, 2013 at 4:00 p.m. (EST).

At the same time, you must also serve a copy of the objection upon the undersigned counsels so as to be received no later than 4:00 p.m. (EST) on February 14, 2013.

A HEARING ON THE MOTION WILL BE HELD ON FEBRUARY 21, 2013 AT 11:30 A.M. (EST) BEFORE THE HONORABLE MARY F. WALRATH, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM 4, WILMINGTON, DELAWARE 19801.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

¹ The Debtors in these cases are: (i) Washington Mutual, Inc. and WMI Investment Corp.
725904

Dated: February 1, 2013

PHILLIPS, GOLDMAN & SPENCE, P.A.

/s/ Stephen W. Spence

Stephen W. Spence, Esquire (#2033)

1200 North Broom Street

Wilmington, DE 19806

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Facsimile: (302) 655-4210

and

EZRA BRUTZKUS GUBNER LLP

Robyn B. Sokol

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Woodland Hills, CA 91367

Telephone: (818) 827-9000

Facsimile: (818) 827-9099

Counsel to Kimberly Cannon

Exhibit “1”

B 10 (Official Form 10) (12/12)

UNITED STATES BANKRUPTCY COURT		District of Delaware	PROOF OF CLAIM
Name of Debtor: Washington Mutual Inc., et al.,		Case Number: 08-12229 (MFW)	COURT USE ONLY
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.			
Name of Creditor (the person or other entity to whom the debtor owes money or property): Kimberly A. Cannon			
Name and address where notices should be sent: 3907 El Cimo Lane Ne Bainbridge Island, WA 98110		Telephone number: _____ email: _____	<input checked="" type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: <u>1248</u> <i>(If known)</i> Filed on: <u>03/12/2009</u>
Name and address where payment should be sent (if different from above): Robyn B. Sokol 21650 Oxnard Street, Suite 500 Woodland Hills, CA 91367-4911		Telephone number: (818) 827-9000 email: rsokol@ebg-law.com	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
1. Amount of Claim as of Date Case Filed: \$ <u>1,136,412.06</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.			
2. Basis for Claim: <u>Employee eaned income, benefits and severence.</u> (See instruction #2)			
3. Last four digits of any number by which creditor identifies debtor: <u>2 2 2 9</u>	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)	
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other Describe: Earned income and benefits. Value of Property: \$ _____ Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ <u>1,136,412.06</u>	
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.			
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input checked="" type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).	Amount entitled to priority: \$ <u>11,725.00</u>
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).	
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.			
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)			

B 10 (Official Form 10) (12/12)

2

7. Documents: Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

- I am the creditor. I am the creditor's authorized agent. I am the trustee, or the debtor, or their authorized agent. I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)
(See Bankruptcy Rule 3004.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Robyn B. Sokol

Title: _____

Company: Ezra Brutzkus Gubner LLP

Address and telephone number (if different from notice address above): _____

(Signature)

(Date)

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

Claim

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. § 506 (a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507 (a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

Summary of Proof of Claim of Kimberly A. Cannon

The following is a detailed breakdown of the claim:

Claim Item	Description	Amount
Special Bonus Opportunity Letter Agreement	Special opportunity granted from Washington Mutual on March 19, 2008 to Kimberly A. Cannon. A true and correct copy of which is attached hereto.	\$80,000.00
Supplemental Executive Retirement Accumulation Plan (SERAP)	Balance in SERAP at termination. A true and correct copy of Claimant's SERAP account indicating the SERAP amount is attached hereto.	\$51,043.39
Change in Control Payment	The Change in Control Agreement between Washington Mutual and Kimberly A. Cannon ("CIC") dated December 17, 2007. A true and correct copy of which is attached hereto.	\$1,005,368.67
WAMU Severance Plan	To the extent that it is determined that a change in control did not occur or WMI is found not to be responsible for obligations under the WaMu Change in Control Agreement, then Claimant is entitled to severance pay in the amount of \$153,462.00 pursuant to the WaMu Severance Plan.	

Total Claim \$1,136,412.06

Washington Mutual Claims Processing
 c/o Kurtzman Carson Consultants LLC
 2335 Alaska Ave.
 El Segundo, CA 90245

Subject: Bankruptcy Proof of Claim for Kimberly Ann Cannon

Employee Information:

Employee Name: Kimberly A Cannon
 Home Address: 3907 El Cimo Lane NE, Bainbridge Is, WA 98110
 Home Phone: 206-842-2945
 e-mail: kimcannon@q.com

Occurrence Information

Date: September 25, 2008; Change in Control for Washington Mutual Bank
 Date: November 19, 2008 Revised Employee Notice of Termination from JPMC
 Location: Seattle, WA

Summary of Claims:

Special Bonus Agreement	\$80,000.00
Supplemental Executive Retirement Accumulation Plan Balance	\$51,043.39
Change in Control Severance Payment	<u>\$1,005,368.67</u>
Total Claim	\$1,136,412.06

Nature of claim – Special Bonus (1):

Washington Mutual Bank entered into an agreement with Kimberly A Cannon on March 19, 2008. In return for an agreement to remain with the company to 12/31/08, the company agreed to pay Kimberly \$160,000, of which 50% of the bonus remained payable as of the transaction date. The agreement is to be considered fulfilled if (1) I remain with the company to 12/31/08, or (2) the role is terminated due to a change in control. Liability for this agreement was triggered and payable on September 25, 2008. See Attachment 1.

Nature of claim – Supplemental Executive Retirement Accumulation Plan (2):

The purpose of the Supplemental Executive Retirement Accumulation Plan (SERAP) is to provide retirement benefits for certain key employees of Washington Mutual that supplement benefits accrued under the qualified plans. The benefit is based on eligible compensation as well as years of Executive Service at Washington Mutual. The balance of this plan is payable at the time employment is terminated. The obligation for \$51,043.39 balance remains. See attachment 2.

Nature of claim – Change in Control (3):

Employee was provided notice of termination by JPMC on November 3, 2008 with revision on November 19. Such notice, combined with the subsequent Change of Control event (as defined

by the Employment Agreement between Kimberly A Cannon and Washington Mutual, dated December 17, 2007), triggers a payment obligation to the Employee, based on the terms of the referenced Employment Agreement. The Change in Control obligation amount is \$1,005,368.67. See attachment 3.

Claim related facts:

- Washington Mutual Inc was seized by the FDIC on September 25, 2008
- The certain assets were then subsequently sold to JPMC, on September 25, 2008.
- Contractual obligations related to the Employment Agreement and the Retention Agreement was retained by the FDIC.
- Termination notice was provided by JP Morgan Chase on November 3 and revised on November 19, 2008.

This event created a Change in Control per Section 5(g)1, which defines a "Change in Control" as:

"The acquisition of ownership, directly or indirectly, beneficially or of record, by any Person (as defined below) or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date of this Agreement), other than the Company, a Subsidiary or any employee benefit plan of the Company, or its Subsidiaries, of shares representing more than 25% of (i) the common stock of the Company, (ii) the aggregate voting power of the Company's voting securities or (iii) the total market value of the Company's voting securities;

... Per section 5 (g)5:

"The sale or transfer (in one or a series of related transactions) of all or substantially all of the Company's assets to another Person (other than a subsidiary) whether assisted or unassisted, voluntary or involuntary."

A Change of Control event occurred with a Government Agency, which is covered per the definition of Change in Control.

Person is defined in Section 5(h)1 as: "Person" shall mean any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or government (or any agency, instrumentality or political subdivision thereof); ... "

The Change of Control liability was triggered when the assets and certain liabilities of Washington Mutual Bank were sold to JP Morgan Chase.

- a) 'This Employment Agreement (the 'Agreement') is between the Subsidiary of Washington Mutual, Inc. by which the undersigned employee is currently employed ("Washington Mutual") and the undersigned employee of Washington Mutual ("Employee")' .

... per Section 13(f):

- b) ...but this Agreement shall run to the benefit of, and be binding upon, the new employer. In the event of a Change in Control, as defined above, this Agreement shall bind, and run to the benefit of, the successor to Washington Mutual resulting from the Change in Control.

...Per section 5(c):

"If (i) Employee's employment is terminated by Washington Mutual or its successor without "cause" (as defined below) upon or within two years after a Change in Control or (ii) Employee resigns for "good reason" (as defined below) upon or within two years after a Change in Control and no reason for Washington Mutual to terminate Employee for "cause" exists, then Employee shall be entitled to receive, within five business days after the effective date of such termination or resignation, from Washington Mutual or its successor, a lump sum equal to two times Employee's annual compensation. Notwithstanding the preceding, the amount paid to employee under this Section 5(c) shall be offset by any payment received by Employee from Washington Mutual or any acquired company pursuant to: (i) a severance or change in control agreement, arrangement or plan, with the exception of any such payment received more than two years before either clause (i) or clause (ii) of this Section 5(c) was satisfied, or (ii) The Worker Adjustment and Retraining Notification Act (WARN Act) or any similar state or local law."

Summary

- 1) Washington Mutual was put into receivership and primarily all of the assets sold to JPMorgan Chase.
- 2) The FDIC did not transfer the Supplemental Executive Retirement Accumulation Plan, Special Bonus Agreement, and Change in Control obligations to JP Morgan Chase.
- 3) As well, I received a notice of job termination (Job Transition Agreement) revised on November 19, 2008, ending my employment with WaMu (JPMC) on January 1, 2009
- 4) Based on the Agreement, payments for the Supplemental Executive Retirement Accumulation Plan, Special Bonus Agreement, and Change in Control obligations are due.

Remedy:

I am seeking the full entitled payments per the Employment Agreement, Supplemental Retirement Executive Retirement Plan and Special bonus agreement, totaling \$1,136,412.06

If you have questions about these claims, please feel free to contact me at the address or phone number noted above.

Regards,



Kimberly A. Cannon
206.842.2945

Market Value of Your Account

Statement Period: 09/25/2008 to 09/25/2008

This section displays the value of your account for the period, in both shares and dollars.

<i>Investment</i>	Shares as of 09/24/2008	Shares as of 09/25/2008	Price as of 09/24/2008	Price as of 09/25/2008	Market Value as of 09/24/2008	Market Value as of 09/25/2008
Bond Investments					\$67,723.05	\$67,723.05
Serap	51,043.390	51,043.390	\$1.00	\$1.00	\$51,043.39	\$51,043.39
Serp	16,679.660	16,679.660	\$1.00	\$1.00	\$16,679.66	\$16,679.66
Account Totals					\$67,723.05	\$67,723.05

Date

SERAP Balance

Market Value By Deferral

Statement Period: 09/25/2008 to 09/25/2008

This section displays the current Market Value of your account by year of distribution.

Deferral Year	Contribution Source:	Distribution Year:	Distribution Type:	Market Value On: 09/25/2008	Effective Date:
Other Contributions	Serp	Separation	5 Year Installment Annual		Current
Other Contributions Serp				\$16,679.66	
Other Contributions	Serap	Election Unknown			Unknown
Other Contributions Serap				\$51,043.39	
Other Contributions Total				\$67,723.05	
Total Mrkt Value On:				\$67,723.05	

Your Contribution Summary

Statement Period: 09/25/2008 to 09/25/2008

Contributions	Serp	Serap
Period to date	\$0.00	\$0.00
Inception to Date	\$15,438.91	\$46,246.16
Vested Percent	100%	100%
Total Account Balance	\$16,679.66	\$51,043.39
Total Vested Balance	\$16,679.66	\$51,043.39

Your Account Activity by Source

Statement Period: 09/25/2008 to 09/25/2008

Your Account Activity - reflects the summary of transactions by source during the statement period

Activity	Serp	Serap	Total
Beginning Balance	\$16,679.66	\$51,043.39	\$67,723.05



WaMu

March 19, 2008

Kimberly Cannon
u131809

Dear Kim,

Re: Special Bonus Opportunity

I'm pleased to offer you this opportunity to earn a special bonus of \$160,000 as a reward for your continued service to Washington Mutual (the "Company" or "WaMu").

Terms of Offer

To receive the bonus, you must remain an employee of the Company, have a current overall performance rating of Solid Contributor or better, and continue to perform your job duties as required and in accordance with Company policies and procedures through December 31, 2008 (the "Bonus Period"). The requirement that you remain an employee of the Company through the Bonus Period is referred to as the "Employment Requirement." Additionally, as noted below, a condition to your entitlement to the special bonus is your compliance with your obligations under this agreement.

If you fulfill these requirements and also meet the other conditions in this letter, you will be entitled to the bonus of \$160,000 . Fifty percent of the bonus will be paid in a lump sum, less taxes and withholding, in the pay advice on June 15, 2008, and the remaining fifty percent will be paid in a lump sum, less taxes and withholding, in the pay advice on January 15, 2009. This payment will be in addition to any other bonus for which you may normally be eligible.

You will continue to be subject to all Company policies and management directives. Your employment will continue to be terminable by you or the company at will, without cause or advance notice. Nothing in this letter is intended to suggest any guaranteed period of continued employment or any guarantee that you will be paid the special bonus. This letter merely sets forth the terms of a special bonus that may be paid to you for achievement of the stated criteria.

There are two situations in which the Employment Requirement is waived for purposes of this retention bonus. First, if your job is eliminated (as defined in the WaMu Severance Plan) you will be treated as having fulfilled the Employment Requirement as long as you remain employed through your Job End Date (as defined in the WaMu Severance Plan). Second, you will be treated as having fulfilled the Employment Requirement if, within two years after a change in control (as defined in Section 5(g) of your Change in Control ("CIC") Agreement), your employment is terminated by the Company or a successor for any reason other than for cause (as defined in Section 5(i) of your CIC Agreement) or you resign for good reason (as defined in Section 5(j) of your CIC Agreement) and no reason exists for the Company or a successor to terminate you for cause (as defined in Section 5(i) your CIC Agreement).

Kimberly Cannon

March 19, 2008

Page 2

Agreement Not to Solicit Personnel

As a condition of this offer, you agree that you will not solicit Washington Mutual personnel for a period of one year after your employment here ends. This means that, regardless of the reason for termination of your employment, you will not directly or indirectly solicit, encourage, induce, or enter into any arrangement with any person who is then a WaMu employee or a contractor or consultant whom you have worked with, supervised, or been exposed to confidential information about while associated with the Company to terminate or diminish his or her relationship with the company, or to seek or accept employment or a similar relationship with any other business or entity including, but not limited to, one that competes with or provides services comparable to those provided by WaMu. If you violate this obligation, you agree to return the bonus promptly, and agree that the Company shall also be entitled to pursue whatever other remedies are available to it.

Other Terms

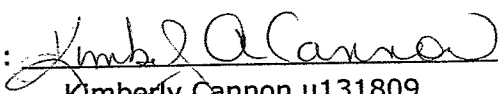
This letter sets forth all of the terms and conditions upon which the special bonus may be paid to you, and it supersedes any other representations about this bonus opportunity. No one at the Company has the authority to make any promises to you that are different from those set forth in this letter on the subject of this special bonus except for personnel from Corporate Rewards who refer to this letter.

We are confident in your ability to make valuable contributions to the Company. On behalf of Washington Mutual, I would like to thank you not only for the service you have already rendered but also, in advance, for the important role that I trust you will continue to play. If you have any questions, please direct them to me. In order to be eligible to receive this special bonus opportunity, you must sign this letter in the designated place below and return it in the enclosed envelope as soon as possible.

Sincerely,

Daryl David

Acknowledgement: I understand and agree to all of the terms set forth in this agreement.

Signature: 
Kimberly Cannon u131809

Date: Mar 19, 2008



**Confidential
Attorney-Client Privileged Communication**

MEMORANDUM

DATE: March 19, 2008

TO: Kim Cannon

FROM: Daryl David

RE: Amendment to Change in Control Agreement and Retention Bonus Agreement

Congratulations! You have been selected to receive an enhancement to your change in control agreement and a separate retention bonus agreement.

The attached amendment to your change in control agreement provides for a modified tax gross up payment under certain circumstances. As you may know, the Internal Revenue Code imposes an excise tax on certain payments and benefits that are received in connection with a change in control, to the extent that they exceed three times an employee's "base amount" (the "Limit"). Your current agreement provides that if you would be subject to the excise tax, your payments under the change in control agreement would be reduced so that the excise tax can be avoided. This amendment provides that if you exceed the Limit by ten percent or more, the Company will make a gross up payment to you instead of reducing your change in control payment. The gross up payment is designed to help you pay the excise tax and any related income and social security taxes. If your payments and benefits exceed the Limit by less than ten percent, your change in control payment will still be reduced, as it would be under your current agreement.

The remainder of your change in control agreement remains in full force and effect.

Cannon, Kimberly Ann u131809

COPY

CHANGE IN CONTROL AGREEMENT

This Change in Control Agreement (the "Agreement") is between the Subsidiary (as defined below) of Washington Mutual, Inc. (the "Company") by which the undersigned employee is currently employed ("Washington Mutual") and the undersigned employee of Washington Mutual ("Employee"). The parties agree as follows:

1. Employment. Washington Mutual hereby employs Employee, and Employee hereby accepts employment, on the terms in this Agreement.

2. Duties. Employee shall perform such duties as Washington Mutual may from time to time direct.

3. Compensation & Benefits. Employee's compensation and benefits shall be as determined by Washington Mutual from time to time.

4. Performance of Duties. Employee agrees that during his or her employment with Washington Mutual: (a) Employee will faithfully perform the duties of such office or offices as he or she may occupy, which duties shall be such as may be assigned to him or her by Washington Mutual; (b) Employee will devote to the performance of his or her duties all such time and attention as Washington Mutual shall reasonably require, taking, however, from time to time, such reasonable vacations as are consistent with his or her duties and Washington Mutual policy; and (c) Employee will not, without Washington Mutual's express consent, become actively associated with or engaged in any business or activity during the term of this Agreement other than that of Washington Mutual (excepting customary family and personal activities, which may include management of personal investments so long as it does not entail active involvement in a business enterprise) and Employee will do nothing inconsistent with his or her duties to Washington Mutual.

5. Termination.

(a) Either Washington Mutual or Employee may terminate Employee's employment at any time in its sole discretion, with or without advance notice. Except as expressly provided in this Agreement or under any employee benefit plan maintained by the Company or its Subsidiaries, upon termination of employment, Washington Mutual shall have no liability to pay any further compensation or any other benefit or sum whatsoever to Employee. Notwithstanding any other provision of this Agreement, this Agreement shall terminate and no further amounts or benefits shall be payable under this Agreement if, at least 120 days prior to a Change in Control (as defined below), Employee transfers to another Washington Mutual position and, under Washington Mutual's policies then in effect, persons occupying that position or a similar position are not eligible to receive a change in control agreement.

(b) Upon termination of employment, Employee's rights under all employee pension plans, employee welfare benefit plans, bonus plans and stock option and restricted stock plans shall be determined under the terms of the plans and grants themselves except as otherwise specifically provided in this Agreement.

(c) If (i) Employee's employment is terminated by Washington Mutual or its successor without "cause" (as defined below) upon or within two years after a Change in Control or (ii) Employee resigns for "good reason" (as defined below) upon or within two years after a Change in

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Control and no reason for Washington Mutual to terminate Employee for "cause" exists, then Employee shall be entitled to receive, within five business days after the effective date of such termination or resignation, from Washington Mutual or its successor, a lump sum equal to two times Employee's annual compensation. Notwithstanding the preceding, the amount paid to employee under this Section 5(c) shall be offset by any payment received by Employee from Washington Mutual or any acquired company pursuant to: (i) a severance or change in control agreement, arrangement or plan, with the exception of any such payment received more than two years before either clause (i) or clause (ii) of this Section 5(c) was satisfied, or (ii) The Worker Adjustment and Retraining Notification Act (WARN Act) or any similar state or local law.

(d) Upon a Change in Control, the lapse of the restrictions on Employee's restricted stock, restricted stock units, stock options and other equity awards shall automatically be accelerated (and, to the extent applicable, the option or other award shall be fully exercisable) unless the applicable award agreement provides otherwise.

(e) For purposes of Section 5(c), Employee's "annual compensation" shall equal the sum of (i) the highest of the Employee's annual base salary for the calendar year in which termination or resignation occurs, the prior calendar year, or the calendar year immediately preceding the year in which the Change in Control occurred, (ii) the highest of (A) the Employee's unadjusted target bonus for the calendar year in which the termination or resignation occurs, (B) the Employee's actual bonus (including, for the avoidance of doubt, any portion of the actual bonus that was deferred or exchanged at the Employee's election for equity awards) for the prior calendar year (annualized if Employee was not employed by Washington Mutual for the entire previous calendar year), or (C) the Employee's actual bonus (including, for the avoidance of doubt, any portion of the actual bonus that was deferred or exchanged at the Employee's election for equity awards) for the calendar year immediately preceding the year in which the Change in Control occurred (annualized if Employee was not employed by Washington Mutual for the entire such calendar year), and (iii) the amount of the contributions or accruals made or anticipated to have been made on Employee's behalf to the Company's or its Subsidiaries' benefit plans for the calendar year in which the termination or resignation occurs, including without limitation contributions to and accruals under qualified and nonqualified defined contribution and defined benefit pension plans and plans qualified under Section 125 of the Internal Revenue Code of 1986, as amended (the "Code"). For purposes of this Section 5(e), bonus refers to monthly, quarterly, annual and other periodic performance-based bonuses based on individual and/or company results, and excludes non-periodic lump sum bonuses (such as sign-on and retention bonuses (even if such bonuses are also performance-based bonuses) and cash and non-cash prizes and awards, including awards from sales contests) and the value of equity awards except as otherwise specifically provided herein.

(f) Notwithstanding the foregoing, if any payment described in Section 5(c) and the value of any lapse of restrictions under Section 5(d), together with any other payments or transfers of property, would constitute a "parachute payment" under Section 280G of the Code, or any successor statute then in effect, the aggregate payments by Washington Mutual or its successor pursuant to Section 5(c) shall be reduced to an amount that, when combined with the value of any lapse of restrictions under Section 5(d) and any other payments or transfers of property taken into account under Section 280G, is one dollar less than the smallest sum that would be considered to be a "parachute" payment.

(g) For purposes of this Agreement, "Change in Control" shall mean:

1. The acquisition of ownership, directly or indirectly, beneficially or of record, by any Person (as defined below) or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date of this

Agreement), other than the Company, a Subsidiary or any employee benefit plan of the Company, or its Subsidiaries, of shares representing more than 25% of (i) the common stock of the Company, (ii) the aggregate voting power of the Company's voting securities or (iii) the total market value of the Company's voting securities;

2. During any period of 25 consecutive calendar months, a majority of the Board of Directors of the Company (the "Board") ceasing to be composed of individuals (i) who were members of the Board on the first day of such period, (ii) whose election or nomination to the Board was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of the Board or (iii) whose election or nomination to the Board was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of the Board; provided that, any director appointed or elected to the Board to avoid or settle a threatened or actual proxy contest shall in no event be deemed to be an individual referred to in clauses (i), (ii) or (iii) above;

3. The good-faith determination by the Board that any Person or group (other than a Subsidiary or any employee benefit plan of the Company or a Subsidiary) has acquired direct or indirect possession of the power to direct or cause to direct the management or policies of the Company, whether through the ability to exercise voting power, by contract or otherwise;

4. The merger, consolidation, share exchange or similar transaction between the Company and another Person (other than a Subsidiary), other than a merger in which the stockholders of Washington Mutual immediately before such merger, consolidation or transaction own, directly or indirectly, immediately following such merger, consolidation or transaction, at least seventy-five percent (75%) of the combined voting power of the surviving entity in such merger, consolidation or transaction in substantially the same proportion as their ownership immediately before such merger, consolidation or transaction; or

5. The sale or transfer (in one transaction or a series of related transactions) of all or substantially all of the Company's assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary.

(h) For purposes of this Agreement:

1. "Person" shall mean any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

2. "Subsidiary" shall mean a corporation that is wholly owned by the Company, either directly or through one or more corporations that are wholly owned by the Company.

3. "Related Company" shall mean any entity that is directly or indirectly controlled by the Company or any entity in which the Company has a significant equity interest, as determined by the Human Resources Committee of the Board.

(i) For purposes of this Agreement, Washington Mutual shall have "cause" to terminate Employee's employment if:

1. Employee violates the Company's or Washington Mutual's policies regarding drug or alcohol use on a recurring basis;

2. Employee is convicted of any felony or of a misdemeanor involving moral turpitude (including forgery, fraud, theft or embezzlement) or enters into a pretrial diversion or similar program in connection with the prosecution for an offense involving dishonesty, breach of trust or money laundering; or

3. Employee has engaged in: (a) dishonesty or fraud, (b) destruction or theft of property of the Company or a Subsidiary, (c) physical attack on another employee, (d) willful malfeasance or gross negligence in the performance of Employee's duties, or (e) misconduct materially injurious to the Company or a Subsidiary.

(j) For purposes of this Agreement, "good reason" for Employee to resign shall mean the occurrence of any of the following events without Employee's consent, provided that the Employee in all events shall have resigned within two years after the Change in Control:

1. The assignment of duties to Employee which (a) are materially different from Employee's duties immediately prior to the Change in Control, or (b) result in Employee having significantly less authority and/or responsibility than Employee had prior to the Change in Control.

2. A reduction of Employee's total pay opportunity from that in effect on the date of the Change in Control. Changes in the allocation of Employee's compensation between salary and incentive compensation, and changes to the criteria or method for determining incentive compensation amounts actually earned, shall not constitute "good reason" for Employee to resign. "Total pay opportunity" means base salary plus target incentive compensation, provided that in the case of incentive compensation for which a "target" is not defined (such as some sales commissions), the incentive component of the pay opportunity shall be the average incentive compensation of Employee during the 24 months preceding the Change in Control.

3. A relocation by more than 50 miles of Employee's principal place of employment as in effect on the date of the Change in Control, if the relocation increases the distance between Employee's principal residence and principal place of employment by more than 25 miles. Distances shall be measured by surface miles, using surface transportation over public streets, roads, highways and waterways, by the shortest route.

(k) For purposes of this Agreement, Employee shall be considered to have resigned for "good reason" only if Washington Mutual fails to cure within 15 days after receiving a written demand to cure that specifies the circumstances constituting "good reason." Also, Employee shall be considered to have resigned for "good reason" only if the effective date of Employee's resignation is within 60 days after the effective date of the occurrence that constitutes "good reason."

6. Death or Disability. If Employee should die or become disabled at any time during his or her employment hereunder, neither Employee nor anyone claiming by, through or under him or her shall be entitled to any further compensation or other sum under this Agreement (but shall be entitled to payments made by insurers under policies of life and disability insurance and any sums which may become available under any employee benefit plan).

7. Confidentiality. Employee agrees that information not generally known to the public to which Employee has been or will be exposed as a result of Employee's employment by Washington Mutual is confidential information that belongs to the Company or its Subsidiaries. This includes information developed by Employee, alone or with others, or entrusted to Employee, or entrusted to the

Company or its Subsidiaries by its customers or others. The Company's and its Subsidiaries' confidential information includes, without limitation, information relating to the Company's or its Subsidiaries' trade secrets, know-how, procedures, purchasing, accounting, marketing, sales, customers, clients, employees, business strategies and acquisition strategies. Employee will hold the Company's and its Subsidiaries' confidential information in strict confidence and will not disclose or use it except as authorized by Washington Mutual and for Washington Mutual's benefit.

8. Possession of Materials. Employee agrees that upon conclusion of employment or request by Washington Mutual, Employee shall turn over to Washington Mutual all documents, files, office supplies and any other material or work product in Employee's possession or control that were created pursuant to or derived from Employee's services for Washington Mutual.

9. Resolution of Disputes. Any dispute arising out of or relating to this Agreement or Employee's employment (or termination of employment) shall be submitted to and resolved by final and binding arbitration as provided in the Binding Arbitration Agreement attached as Exhibit A, whether the claimant is Employee or Washington Mutual. Employee and Washington Mutual also agree to exhaust all remedies available under the Washington Mutual, Inc. Dispute Resolution Process, as in effect from time to time, before initiating arbitration; provided that Employee shall not be required to use or follow the Dispute Resolution Process before initiating arbitration of any claim that arises upon or within two years after a Change in Control. In any dispute in arbitration or court arising out of or relating to this Agreement, the losing party shall pay the prevailing party's reasonable attorneys' fees, costs and expenses.

10. Agreement Not To Solicit Personnel. In consideration for the mutual undertakings of the parties under this Agreement and Employee's access as an employee of Washington Mutual to employees, contractors and consultants of the Company and Related Companies, Employee agrees that, during Employee's employment with Washington Mutual, and for a period of one year following termination of employment, Employee will not in any manner, directly or indirectly, solicit, encourage, induce, or recruit any person who is then an employee, contractor, or consultant of the Company or a Related Company, and whom Employee worked with, supervised, or had access to confidential information about while employed by Washington Mutual, to seek or accept employment or a contractual or consulting engagement with any business that competes with or provides services comparable to those provided by the Company or its subsidiaries.

11. Intellectual Property Ownership. In addition, in consideration of the mutual undertakings of the parties under this Agreement, Washington Mutual will own all rights to the results of Employee's work, including inventions and other intellectual property developed using Company or its subsidiaries' equipment, supplies, facilities or trade secret information. It will also own all rights to the results of any other effort of Employee (outside of Employee's performance of Washington Mutual work) that relate directly to Employee's work or to the Company's or its subsidiaries' business or actual or demonstrably anticipated research or development. Washington Mutual's rights extend to anything that is authored, conceived, invented, written, reduced to practice, improved or made by Employee, alone or jointly with others, during the period of Employee's employment by Washington Mutual. To the extent that the results of Employee's work or other effort constitute a "work made for hire" as defined under U.S. copyright law, the copyright shall belong solely to Washington Mutual. Otherwise, to the extent that such results are legally protectable, then Employee hereby irrevocably assigns all copyrights, patent rights, and other proprietary rights therein to Washington Mutual, and no further action by Employee is required to grant ownership to Washington Mutual. Employee will assist in preparing and executing documents, and will take any other steps requested by Washington Mutual, to vest, confirm or demonstrate its ownership rights, and Employee will not at any time contest the validity of such rights.

Employee understands that the termination of Employee's employment will not terminate or invalidate any of Employee's obligations, or Washington Mutual's rights, as described above.

Employee understands that the above commitments are in furtherance of the WaMu Intellectual Property Policy (a copy of which Employee has had an opportunity to review and is also found on wamu.net), which is incorporated herein but not set forth in full due to space limitations. If Employee lives or works in Washington, California, Illinois, or in any other state mentioned in the Invention Notice section of the policy, then the above assignment does not apply to inventions described in the Invention Notice for Employee's state.

12. Remedies for Certain Breaches Related to Solicitation and Intellectual Property. Should Employee breach the agreements set forth in Section 10 or 11, in addition to any other remedy available to Washington Mutual, (a) the Employee shall immediately pay to Washington Mutual any payment made pursuant to Section 5(c); (b) pursuant to the relevant award agreements, any option that vested upon a Change in Control ("Option"), or portion of such Option, that remains unexercised shall terminate and cease to be exercisable; (c) pursuant to the relevant award agreements, for any Option, or portion of such Option, already exercised, Employee shall immediately pay to Washington Mutual any difference between the fair market value of the Option shares on the date of exercise and the exercise price of such Option shares; and (d) pursuant to the relevant award agreements, Employee will immediately pay to Washington Mutual the fair market value as of the Change in Control of any shares of restricted stock that vested upon a Change in Control. The parties agree that, to the extent the restrictions set forth in Sections 10 and 11 and this Section 12 are found to be unenforceable in any respect, this Section 12 shall be construed to be enforceable to the maximum extent permitted by law.

13. Miscellaneous.

(a) This Agreement is the entire agreement between the parties and may not be modified or abrogated orally or by course of dealing, but only by another instrument in writing duly executed by the parties. This Agreement replaces and supersedes all prior agreements on these subjects that Employee may have with the Company, or any Subsidiary, provided, however, that this Agreement shall supplement and shall not supersede any other agreement that Employee has signed in favor of the Company or any Subsidiary protecting the confidentiality of its confidential information or its interest in intellectual property. All such agreements remain in full force and effect. Employee acknowledges that Employee shall be entitled to change in control benefits, severance benefits or other employment separation benefits only as specifically provided in this Agreement (or, to the extent applicable according to its terms, as provided in the Washington Mutual, Inc. Special Severance Plan as in effect from time to time), notwithstanding the terms of any other representation, policy, severance plan, benefit plan or agreement.

(b) Notwithstanding any provision of this Agreement to the contrary, if, at the time of Employee's termination of employment with Washington Mutual, he or she is a "specified employee" as defined in Section 409A of the Code, and one or more of the payments or benefits received or to be received by Employee pursuant to this Agreement would constitute deferred compensation subject to Section 409A, no such payment or benefit will be provided under this Agreement until the earlier of (a) the date that is six (6) months following Employee's termination of employment with Washington Mutual, or (b) the Employee's death. The provisions of this Section 13(b) shall only apply to the extent required to avoid Employee's incurrence of any penalty tax or interest under Section 409A of the Code or any regulations or Treasury guidance promulgated thereunder. In addition, if any provision of this Agreement would cause Employee to incur any penalty tax or interest under Section 409A of the Code or any regulations or Treasury guidance promulgated thereunder, Washington Mutual may reform such

Cannon, Kimberly Ann u131809

provision to maintain to the maximum extent practicable the original intent of the applicable provision without violating the provisions of Section 409A of the Code.

(c) This Agreement has been drafted in contemplation of and shall be construed in accordance with and governed by the law of the state of Employee's principal place of employment with Washington Mutual.

(d) Employee acknowledges that this Agreement has been drafted by counsel for Washington Mutual, and that Employee has not relied upon such counsel with respect to this Agreement.

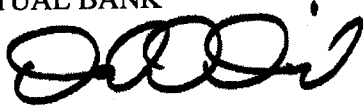
(e) If a court or arbitrator of competent jurisdiction or governmental authority declares any term or provision hereof invalid, unenforceable or unacceptable, the remaining terms and provisions hereof shall be unimpaired and the invalid, unenforceable or unacceptable term or provision shall be replaced by a term or provision that is valid, enforceable and acceptable and that comes closest to expressing the intention of the invalid, unenforceable or unacceptable term or provision.

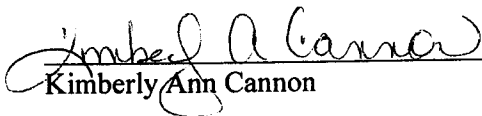
(f) Employee may not assign Employee's rights or delegate Employee's duties under this Agreement.

Washington Mutual may assign its rights and delegate its duties under this Agreement to the Company or any Subsidiary or to any purchaser of all or substantially all of Washington Mutual's assets. The transfer of Employee's employment from Washington Mutual to any other Subsidiary or to the purchaser of all or substantially all of the assets of Washington Mutual shall not be considered a termination of employment, but this Agreement shall run to the benefit of, and be binding upon, the new employer. In the event of a Change in Control, this Agreement shall bind, and run to the benefit of, the successor to Washington Mutual resulting from the Change in Control.

DATED effective as of the 17th of December 2007.

WASHINGTON MUTUAL: WASHINGTON MUTUAL BANK

By 
Daryl D. David
Executive Vice President
Chief Human Resources Officer

EMPLOYEE: 
Kimberly Ann Cannon

Dec 21, 2007
DATE

EXHIBIT A
BINDING ARBITRATION AGREEMENT

This Binding Arbitration Agreement is a part of, and incorporated into, that certain Change in Control Agreement between the parties dated effective as of December 17, 2007. I, the employee who is a party to the Change in Control Agreement to which this Exhibit is attached, as well as Washington Mutual, agree as follows:

1. Any and all disputes that involve or relate in any way to my employment (or termination of employment) with Washington Mutual shall be submitted to and resolved by final and binding arbitration.

2. Washington Mutual and I understand that, by entering into this Binding Arbitration Agreement, we are each waiving any right we may have to file a lawsuit or other civil action or proceeding relating to my employment with Washington Mutual, and are waiving any right we may have to resolve employment disputes through trial by jury. We agree that arbitration shall be in lieu of any and all lawsuits or other civil legal proceedings relating to my employment.

3. This Binding Arbitration Agreement is intended to cover all civil claims that involve or relate in any way to my employment (or termination of employment) with Washington Mutual, including, but not limited to, claims of employment discrimination or harassment on the basis of race, sex, age, religion, color, national origin, sexual orientation, disability and veteran status (including claims under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act ("ERISA"), the Fair Labor Standards Act, the Immigration Reform and Control Act and any other local, state or federal law concerning employment or employment discrimination), claims based on violation of public policy or statute, and claims against individuals or entities employed by, acting on behalf of, or affiliated with Washington Mutual. However, ERISA plan benefit issues and claims for workers compensation or for unemployment compensation benefits are not covered by this Binding Arbitration Agreement. The statutes of limitations otherwise applicable under law shall apply to all claims made in the arbitration.

4. I understand and agree that, despite anything in this Binding Arbitration Agreement to the contrary, I am not waiving the right to file or institute a complaint or charge with any government agency authorized to investigate or resolve employment-related matters, including but not limited to the United States Equal Employment Opportunity Commission, the Department of Labor, the Occupational Safety and Health Administration, the National Labor Relations Board, the Office of Special Counsel for Unfair Immigration-Related Employment Practices or other appropriate immigration authorities, and any other comparable local, state or federal agency. I also understand and agree that, despite anything in this Binding Arbitration Agreement to the contrary, either party may request a court to issue such temporary or interim relief (including temporary restraining orders and preliminary injunctions) as may be appropriate, either before or after arbitration is commenced. The temporary or interim relief may remain in effect pending the outcome of arbitration. No such request shall be a waiver of the right to submit any dispute to arbitration.

5. This Binding Arbitration Agreement does not constitute an employment contract, require discharge only for cause, or require any particular corrective action or discharge procedures.

6. Arbitration under this Binding Arbitration Agreement shall be conducted before a single arbitrator and shall take place within the state where I am currently employed by Washington Mutual, or where I was so employed at the time of termination.

7. In order to initiate arbitration, Washington Mutual or I must notify the other party in writing of its decision to initiate arbitration, either by personal delivery or certified mail. The notification should include the following information about the employee: name, home address, work address, work and home phone number, and the following information about the occurrence: date, location, nature of the claims or dispute, facts upon which the claims are made, and remedy requested. Any notice of arbitration initiated by Washington Mutual shall be sent to my last known residence address as reflected in my personnel file at Washington Mutual. Notice of arbitration initiated by me shall be sent to Washington Mutual's Legal Department, attention General Counsel - Litigation. The Legal Department's address is currently Washington Mutual, 1301 Second Ave., WMC: 3501, Seattle, Washington 98101.

8. Within thirty (30) days after receipt of notice of arbitration, Washington Mutual and I will attempt to agree upon a mutually acceptable arbitrator. If Washington Mutual and I are unable to agree upon an arbitrator, we will submit the dispute to the American Arbitration Association ("AAA"). If AAA is, for some reason, unable or unwilling to accept the matter, we will submit the matter to a comparable arbitration service. The arbitration shall be conducted in accordance with the laws of the state in which the arbitration is conducted and the rules and requirements of the arbitration service being utilized, to the extent that such rules and requirements do not conflict with the terms of this Binding Arbitration Agreement.

9. At the request of either Washington Mutual or myself, the arbitrator will schedule a pre-hearing conference to, among other things, agree on procedural matters, obtain stipulations, and attempt to narrow the issues.

10. During the arbitration process, Washington Mutual and I may each make a written demand on the other for a list of witnesses, including experts, to be called and/or copies of documents to be introduced at the hearing. The demand must be served at least thirty (30) days prior to the hearing. The list and copies of documents must be delivered within twenty-five (25) days of service of the demand.

11. Each party shall be entitled to conduct a limited amount of discovery prior to the arbitration hearing. Each party may take a maximum of two (2) depositions. Each party may apply to the arbitrator for further discovery. Such further discovery may, in the discretion of the arbitrator, be awarded upon a showing of sufficient cause. If any documents to be produced or requested for production contain or refer to matters that are private, proprietary and/or confidential, the arbitrator shall make an appropriate protective order prohibiting or limiting use and disclosure of such documents and providing for return of documents produced after the arbitration is concluded.

12. Each party may file a brief with the arbitrator. Each brief must be served on the arbitrator and the other party at least five (5) working days prior to the hearing and, if not timely served, must be disregarded by the arbitrator. The brief shall specify the facts the party intends to prove, analyze the applicable law or policy, and specify the remedy sought. At the close of the hearing, each party shall be given leave to file a post-hearing brief. The time for filing the post-hearing brief shall be set by the arbitrator.

13. I understand that, at my expense, I have the right to hire an attorney to represent me in the arbitration, and Washington Mutual has that same right. I also understand that all parties shall have the right to present evidence at the arbitration, through testimony and documents, and to cross-examine witnesses called by another party. Each party agrees to pay the fees of any witnesses testifying at that party's request. Each party also agrees to pay the cost of any stenographic record of the arbitration hearing should that party request any such record. The requesting party must notify the other of such arrangements at least two (2) working days in advance of the hearing.

14. Any postponement or cancellation fee imposed by the arbitration service will be paid by the party requesting the postponement or cancellation. During the time the arbitration proceedings are ongoing, Washington Mutual will advance any required administrative or arbitrator's fees. Each party will pay its own witness fees.

15. At the conclusion of the arbitration, each party agrees to promptly pay any arbitration award against it.

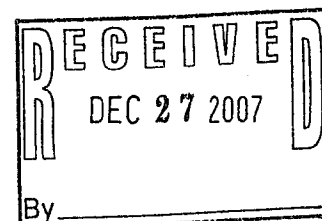
16. We agree that the decision of the arbitrator shall be final and binding on all parties and shall be the exclusive remedy of the parties. The arbitrator shall issue a written and signed statement of the basis of his or her decision, including findings of fact and conclusions of law. In making the decision and award, if any, the arbitrator shall apply applicable substantive law. The arbitrator may only award a remedy that would have been available in court. The decision and award, if any, shall be consistent with the terms of this Binding Arbitration Agreement and shall include an allocation of the costs of the arbitration proceeding between the parties.

17. This Binding Arbitration Agreement may be enforced by a court of competent jurisdiction through the filing of a petition to compel arbitration, or otherwise. The decision and award of the arbitrator may also be judicially enforced pursuant to applicable law.

18. Because of the interstate nature of Washington Mutual's business, this Binding Arbitration Agreement is governed by the Federal Arbitration Act, 9 U.S.C. §1 et seq. (the "FAA"). The provisions of the FAA (and to the extent not preempted by the FAA, the provisions of the laws of the state of my principal place of employment with Washington Mutual that generally apply to commercial arbitration agreements, such as provisions granting stays of court actions pending arbitration) are incorporated into this Binding Arbitration Agreement to the extent not inconsistent with the other terms of this Binding Arbitration Agreement.

19. We agree that, if any provision of this Binding Arbitration Agreement is found to be unenforceable to any extent or in violation of any statute, rule, regulation or common law, it will not affect the enforceability of the remaining provisions and the court shall enforce the affected provision and all remaining provisions to the fullest extent permitted by law.

20. This Binding Arbitration Agreement shall remain in full force and effect at all times during and subsequent to my employment with Washington Mutual, or any successor in interest to Washington Mutual.



COPY

**FIRST AMENDMENT TO
CHANGE IN CONTROL AGREEMENT**

WHEREAS, Washington Mutual, Inc. or a subsidiary thereof ("Washington Mutual") and Kimberly Ann Cannon ("Employee") are parties to a Change in Control Agreement dated as of December 17, 2007 (the "Agreement");

WHEREAS, the parties wish to amend the Agreement to provide that Employee shall be entitled to a "modified gross-up" of the excise tax imposed on Employee pursuant to Section 4999 of the Internal Revenue Code of 1986, as amended, to the extent any payments under the Agreement or otherwise are "parachute payments" subject to such excise tax;

NOW, THEREFORE, Section 5(f) of the Agreement is hereby replaced in its entirety with the following, effective upon execution of this First Amendment by Employee and an authorized representative of Washington Mutual:

If Employee becomes entitled to the payments and equity acceleration described in Sections 5(c) and 5(d) and such payments and benefits, together with any other payments or transfers of property (collectively the "Severance Payments"), constitute "parachute" payments under Section 280G of the Code, then:

1. If the Severance Payments exceed three times Employee's "base amount" (as defined in Section 280G of the Code) by less than ten percent (10%), then the payments described in Section 5(c) shall be reduced to an amount that, when combined with lapse of restrictions under Section 5(d) and any other payments or transfers at property taken into account under Section 280G, is one dollar less than the smallest sum that would be considered to be a "parachute" payment; or
2. If the Severance Payments exceed three times Employee's base amount by ten percent (10%) or more, then Washington Mutual shall pay an additional amount (the "Gross-Up Payment") to Employee. The Gross-Up Payment shall be equal to the amount necessary so that the net amount retained by Employee, after subtracting the parachute excise tax imposed by Section 4999 of the Code, as amended, or any successor statute then in effect (the "Excise Tax"), and after also subtracting all federal, state or local income tax, FICA tax and Excise Tax on the Gross-Up Payment, shall be equal to the net amount Employee would have retained if no Excise Tax has been imposed and no Gross-Up Payment had been paid. The amount of the Gross-Up Payment shall be determined in good faith by nationally recognized registered public accountants or tax counsel selected by the Company, who shall apply the following assumptions: (i) Employee shall be treated as paying federal income taxes at the highest marginal rate in the calendar year in which the Gross-Up Payment is made, and (ii) Employee shall be treated as paying state and local income taxes at the highest marginal rate(s) in the calendar year in which the Gross-Up Payment is made in the locality of Employee's residence as of the effective date of Employee's termination or resignation, net of the maximum reduction in federal income taxes that could be

obtained from deducting those state and local taxes. The Gross-Up Payment shall be made within five business days after the effective date of Employee's termination or resignation, provided that if the Gross-Up Payment cannot be determined within that time, the Company shall pay Employee within that time an estimate, determined in good faith by Washington Mutual, of the minimum amount of the Gross-Up Payment and shall pay the remainder (plus interest at the rate provided in Section 1274(b)(2)(B) of the Code) as soon as the amount can be determined but in no event later than the 30th day after the effective date of Employee's termination or resignation. If the estimated payment is more than the amount later determined to have been due, the excess (plus interest at the rate provided in Section 1274(b)(2)(B) of the Code) shall be repaid by Employee within five business days after written demand. In all events, any Gross-Up Payment made pursuant to this Section 5(f) shall be paid to Employee no later than the end of the calendar year following the year in which the related taxes are remitted to the applicable taxing authority. If the actual Excise Tax imposed is less than the amount that was taken into account in determining the amount of the Gross-Up Payment, Employee shall repay at the time that the amount of the reduced Excise Tax is finally determined the portion of the Gross-Up Payment attributable to that reduction (plus the portion of the Gross-Up Payment attributable to the Excise Tax, FICA tax and federal, state and local income tax imposed on the portion of the Gross-Up Payment being repaid by Employee, to the extent the repayment results in a reduction in or refund of Excise Tax, FICA tax or federal, state or local income tax), plus interest on the amount of the repayment at the rate provided in Section 1274(b)(2)(B) of the Code. If the actual Excise Tax imposed is more than the amount that was taken into account in determining the amount of the Gross-Up Payment, Washington Mutual shall make an additional Gross-Up Payment in respect of such excess (plus interest at the rate provided in Section 1274(b)(2)(B) of the Code) at the time that the amount of the excess is finally determined.


NOW, THEREFORE, the remainder of the Agreement shall remain in full force and effect.

[Remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the 19th day of March, 2008.

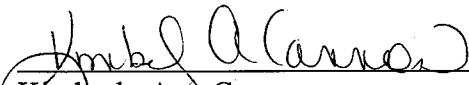
WASHINGTON MUTUAL:

WASHINGTON MUTUAL

By 

Daryl D. David
Executive Vice President
Chief Human Resources Officer

EMPLOYEE:



Kimberly Ann Cannon

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Exhibit “2”

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (check only one):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor): Name ID: 5439462 Pack No. 19180

KIMBERLY A CANNON
3907 EL CIMO LANE NE
BAINBRIDGE ISLAND, WA 98110
USA

Telephone number: _____ Email Address: _____

Name and address where payment should be sent (if different from above)

Telephone number: _____ Email Address: _____

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)

Filed on: _____

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

Your Claim Is Scheduled as Follows:

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

Claim existing as of the date case was filed. **Amount of Claim as of Date Case Filed:** \$ 1,136,412.00

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

Check this box if claim is filed by a governmental unit.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: employee earned income + benefits
(See instruction #2 on reverse side)

3. Last four digits of any number by which creditor identifies debtor: 2229 (see otherside)

3a. Debtor may have scheduled account as: EPIC as receiver of Wamu or JPMchase
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: earned income + benefits

Value of Property: \$ _____ Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ _____ Basis for perfection: _____

Amount of Secured Claim: \$ 1,136,412.00 **Amount Unsecured:** \$ _____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

Other – Specify applicable paragraph of 11 U.S.C. § 507(a)(____).

Amount entitled to priority:

\$ 1,136,412.00

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) **DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.**

If the documents are not available, please explain:

Date:
3/1/09

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Kimberly A Cannon

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

FOR COURT USE ONLY

RECEIVED

MAR 12 2009

KURTZMAN CARSON CONSULTANTS



Washington Mutual Claims Processing
 c/o Kurtzman Carson Consultants LLC
 2335 Alaska Ave.
 El Segundo, CA 90245

Subject: Bankruptcy Proof of Claim for Kimberly Ann Cannon

Employee Information:

Employee Name: Kimberly A Cannon
 Home Address: 3907 El Cimo Lane NE, Bainbridge Is, WA 98110
 Home Phone: 206-842-2945
 e-mail: kimcannon@q.com

Occurrence Information

Date: September 25, 2008; Change in Control for Washington Mutual Bank
 Date: November 19, 2008 Revised Employee Notice of Termination from JPMC
 Location: Seattle, WA

Summary of Claims:

Special Bonus Agreement	\$80,000.00
Supplemental Executive Retirement Accumulation Plan Balance	\$51,043.39
Change in Control Severance Payment	<u>\$1,005,368.67</u>
Total Claim	\$1,136,412.06

Nature of claim – Special Bonus (1):

Washington Mutual Bank entered into an agreement with Kimberly A Cannon on March 19, 2008. In return for an agreement to remain with the company to 12/31/08, the company agreed to pay Kimberly \$160,000, of which 50% of the bonus remained payable as of the transaction date. The agreement is to be considered fulfilled if (1) I remain with the company to 12/31/08, or (2) the role is terminated due to a change in control. Liability for this agreement was triggered and payable on September 25, 2008. See Attachment 1.

Nature of claim – Supplemental Executive Retirement Accumulation Plan (2):

The purpose of the Supplemental Executive Retirement Accumulation Plan (SERAP) is to provide retirement benefits for certain key employees of Washington Mutual that supplement benefits accrued under the qualified plans. The benefit is based on eligible compensation as well as years of Executive Service at Washington Mutual. The balance of this plan is payable at the time employment is terminated. The obligation for \$51,043.39 balance remains. See attachment 2.

Nature of claim – Change in Control (3):

Employee was provided notice of termination by JPMC on November 3, 2008 with revision on November 19. Such notice, combined with the subsequent Change of Control event (as defined

by the Employment Agreement between Kimberly A Cannon and Washington Mutual, dated December 17, 2007), triggers a payment obligation to the Employee, based on the terms of the referenced Employment Agreement. The Change in Control obligation amount is \$1,005,368.67. See attachment 3.

Claim related facts:

- Washington Mutual Inc was seized by the FDIC on September 25, 2008
- The certain assets were then subsequently sold to JPMC, on September 25, 2008.
- Contractual obligations related to the Employment Agreement and the Retention Agreement was retained by the FDIC.
- Termination notice was provided by JP Morgan Chase on November 3 and revised on November 19, 2008.

This event created a Change in Control per Section 5(g)1, which defines a "Change in Control" as:

"The acquisition of ownership, directly or indirectly, beneficially or of record, by any Person (as defined below) or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date of this Agreement), other than the Company, a Subsidiary or any employee benefit plan of the Company, or its Subsidiaries, of shares representing more than 25% of (i) the common stock of the Company, (ii) the aggregate voting power of the Company's voting securities or (iii) the total market value of the Company's voting securities;

... Per section 5 (g)5:

"The sale or transfer (in one or a series of related transactions) of all or substantially all of the Company's assets to another Person (other than a subsidiary) whether assisted or unassisted, voluntary or involuntary."

A Change of Control event occurred with a Government Agency, which is covered per the definition of Change in Control.

Person is defined in Section 5(h)1 as: "Person" shall mean any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or government (or any agency, instrumentality or political subdivision thereof); ... "

The Change of Control liability was triggered when the assets and certain liabilities of Washington Mutual Bank were sold to JP Morgan Chase.

- a) 'This Employment Agreement (the 'Agreement') is between the Subsidiary of Washington Mutual, Inc. by which the undersigned employee is currently employed ("Washington Mutual") and the undersigned employee of Washington Mutual ("Employee")' .

... per Section 13(f):

- b) ..."but this Agreement shall run to the benefit of, and be binding upon, the new employer. In the event of a Change in Control, as defined above, this Agreement shall bind, and run to the benefit of, the successor to Washington Mutual resulting from the Change in Control.

...Per section 5(c):

"If (i) Employee's employment is terminated by Washington Mutual or its successor without "cause" (as defined below) upon or within two years after a Change in Control or (ii) Employee resigns for "good reason" (as defined below) upon or within two years after a Change in Control and no reason for Washington Mutual to terminate Employee for "cause" exists, then Employee shall be entitled to receive, within five business days after the effective date of such termination or resignation, from Washington Mutual or its successor, a lump sum equal to two times Employee's annual compensation. Notwithstanding the preceding, the amount paid to employee under this Section 5(c) shall be offset by any payment received by Employee from Washington Mutual or any acquired company pursuant to: (i) a severance or change in control agreement, arrangement or plan, with the exception of any such payment received more than two years before either clause (i) or clause (ii) of this Section 5(c) was satisfied, or (ii) The Worker Adjustment and Retraining Notification Act (WARN Act) or any similar state or local law."

Summary

- 1) Washington Mutual was put into receivership and primarily all of the assets sold to JPMorgan Chase.
- 2) The FDIC did not transfer the Supplemental Executive Retirement Accumulation Plan, Special Bonus Agreement, and Change in Control obligations to JP Morgan Chase.
- 3) As well, I received a notice of job termination (Job Transition Agreement) revised on November 19, 2008, ending my employment with WaMu (JPMC) on January 1, 2009
- 4) Based on the Agreement, payments for the Supplemental Executive Retirement Accumulation Plan, Special Bonus Agreement, and Change in Control obligations are due.

Remedy:

I am seeking the full entitled payments per the Employment Agreement, Supplemental Retirement Executive Retirement Plan and Special bonus agreement, totaling \$1,136,412.06

If you have questions about these claims, please feel free to contact me at the address or phone number noted above.

Regards,



Kimberly A. Cannon
206.842.2945

Market Value of Your Account

Statement Period: 09/25/2008 to 09/25/2008

This section displays the value of your account for the period, in both shares and dollars.

<i>Investment</i>	Shares as of 09/24/2008	Shares as of 09/25/2008	Price as of 09/24/2008	Price as of 09/25/2008	Market Value as of 09/24/2008	Market Value as of 09/25/2008
Bond Investments					\$67,723.05	\$67,723.05
Serap	51,043.390	51,043.390	\$1.00	\$1.00	\$51,043.39	\$51,043.39
Serp	16,679.660	16,679.660	\$1.00	\$1.00	\$16,679.66	\$16,679.66
Account Totals					\$67,723.05	\$67,723.05

Date

SERAP Balance

Market Value By Deferral

Statement Period: 09/25/2008 to 09/25/2008

This section displays the current Market Value of your account by year of distribution.

Deferral Year	Contribution Source:	Distribution Year:	Distribution Type:	Market Value On: 09/25/2008	Effective Date:
Other Contributions	Serp	Separation	5 Year Installment Annual		Current
Other Contributions Serp				\$16,679.66	
Other Contributions	Serap	Election Unknown			Unknown
Other Contributions Serap				\$51,043.39	
Other Contributions Total				\$67,723.05	
Total Mrkt Value On:				\$67,723.05	

Your Contribution Summary

Statement Period: 09/25/2008 to 09/25/2008

Contributions	Serp	Serap
Period to date	\$0.00	\$0.00
Inception to Date	\$15,438.91	\$46,246.16
Vested Percent	100%	100%
Total Account Balance	\$16,679.66	\$51,043.39
Total Vested Balance	\$16,679.66	\$51,043.39

Your Account Activity by Source

Statement Period: 09/25/2008 to 09/25/2008

Your Account Activity - reflects the summary of transactions by source during the statement period

Activity	Serp	Serap	Total
Beginning Balance	\$16,679.66	\$51,043.39	\$67,723.05



March 19, 2008

Kimberly Cannon
u131809

Dear Kim,

Re: Special Bonus Opportunity

I'm pleased to offer you this opportunity to earn a special bonus of \$160,000 as a reward for your continued service to Washington Mutual (the "Company" or "WaMu").

Terms of Offer

To receive the bonus, you must remain an employee of the Company, have a current overall performance rating of Solid Contributor or better, and continue to perform your job duties as required and in accordance with Company policies and procedures through December 31, 2008 (the "Bonus Period"). The requirement that you remain an employee of the Company through the Bonus Period is referred to as the "Employment Requirement." Additionally, as noted below, a condition to your entitlement to the special bonus is your compliance with your obligations under this agreement.

If you fulfill these requirements and also meet the other conditions in this letter, you will be entitled to the bonus of \$160,000 . Fifty percent of the bonus will be paid in a lump sum, less taxes and withholding, in the pay advice on June 15, 2008, and the remaining fifty percent will be paid in a lump sum, less taxes and withholding, in the pay advice on January 15, 2009. This payment will be in addition to any other bonus for which you may normally be eligible.

You will continue to be subject to all Company policies and management directives. Your employment will continue to be terminable by you or the company at will, without cause or advance notice. Nothing in this letter is intended to suggest any guaranteed period of continued employment or any guarantee that you will be paid the special bonus. This letter merely sets forth the terms of a special bonus that may be paid to you for achievement of the stated criteria.

There are two situations in which the Employment Requirement is waived for purposes of this retention bonus. First, if your job is eliminated (as defined in the WaMu Severance Plan) you will be treated as having fulfilled the Employment Requirement as long as you remain employed through your Job End Date (as defined in the WaMu Severance Plan). Second, you will be treated as having fulfilled the Employment Requirement if, within two years after a change in control (as defined in Section 5(g) of your Change in Control ("CIC") Agreement), your employment is terminated by the Company or a successor for any reason other than for cause (as defined in Section 5(i) of your CIC Agreement) or you resign for good reason (as defined in Section 5(j) of your CIC Agreement) and no reason exists for the Company or a successor to terminate you for cause (as defined in Section 5(i) your CIC Agreement).

Kimberly Cannon

March 19, 2008

Page 2

Agreement Not to Solicit Personnel

As a condition of this offer, you agree that you will not solicit Washington Mutual personnel for a period of one year after your employment here ends. This means that, regardless of the reason for termination of your employment, you will not directly or indirectly solicit, encourage, induce, or enter into any arrangement with any person who is then a WaMu employee or a contractor or consultant whom you have worked with, supervised, or been exposed to confidential information about while associated with the Company to terminate or diminish his or her relationship with the company, or to seek or accept employment or a similar relationship with any other business or entity including, but not limited to, one that competes with or provides services comparable to those provided by WaMu. If you violate this obligation, you agree to return the bonus promptly, and agree that the Company shall also be entitled to pursue whatever other remedies are available to it.

Other Terms

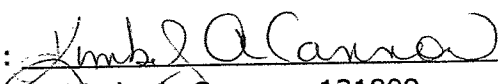
This letter sets forth all of the terms and conditions upon which the special bonus may be paid to you, and it supersedes any other representations about this bonus opportunity. No one at the Company has the authority to make any promises to you that are different from those set forth in this letter on the subject of this special bonus except for personnel from Corporate Rewards who refer to this letter.

We are confident in your ability to make valuable contributions to the Company. On behalf of Washington Mutual, I would like to thank you not only for the service you have already rendered but also, in advance, for the important role that I trust you will continue to play. If you have any questions, please direct them to me. In order to be eligible to receive this special bonus opportunity, you must sign this letter in the designated place below and return it in the enclosed envelope as soon as possible.

Sincerely,

Daryl David

Acknowledgement: I understand and agree to all of the terms set forth in this agreement.

Signature: 
Kimberly Cannon u131809

Date: Mar 19, 2008



**Confidential
Attorney-Client Privileged Communication**

MEMORANDUM

DATE: March 19, 2008

TO: Kim Cannon

FROM: Daryl David

RE: Amendment to Change in Control Agreement and Retention Bonus Agreement

Congratulations! You have been selected to receive an enhancement to your change in control agreement and a separate retention bonus agreement.

The attached amendment to your change in control agreement provides for a modified tax gross up payment under certain circumstances. As you may know, the Internal Revenue Code imposes an excise tax on certain payments and benefits that are received in connection with a change in control, to the extent that they exceed three times an employee's "base amount" (the "Limit"). Your current agreement provides that if you would be subject to the excise tax, your payments under the change in control agreement would be reduced so that the excise tax can be avoided. This amendment provides that if you exceed the Limit by ten percent or more, the Company will make a gross up payment to you instead of reducing your change in control payment. The gross up payment is designed to help you pay the excise tax and any related income and social security taxes. If your payments and benefits exceed the Limit by less than ten percent, your change in control payment will still be reduced, as it would be under your current agreement.

The remainder of your change in control agreement remains in full force and effect.

COPY

CHANGE IN CONTROL AGREEMENT

This Change in Control Agreement (the "Agreement") is between the Subsidiary (as defined below) of Washington Mutual, Inc. (the "Company") by which the undersigned employee is currently employed ("Washington Mutual") and the undersigned employee of Washington Mutual ("Employee"). The parties agree as follows:

1. Employment. Washington Mutual hereby employs Employee, and Employee hereby accepts employment, on the terms in this Agreement.

2. Duties. Employee shall perform such duties as Washington Mutual may from time to time direct.

3. Compensation & Benefits. Employee's compensation and benefits shall be as determined by Washington Mutual from time to time.

4. Performance of Duties. Employee agrees that during his or her employment with Washington Mutual: (a) Employee will faithfully perform the duties of such office or offices as he or she may occupy, which duties shall be such as may be assigned to him or her by Washington Mutual; (b) Employee will devote to the performance of his or her duties all such time and attention as Washington Mutual shall reasonably require, taking, however, from time to time, such reasonable vacations as are consistent with his or her duties and Washington Mutual policy; and (c) Employee will not, without Washington Mutual's express consent, become actively associated with or engaged in any business or activity during the term of this Agreement other than that of Washington Mutual (excepting customary family and personal activities, which may include management of personal investments so long as it does not entail active involvement in a business enterprise) and Employee will do nothing inconsistent with his or her duties to Washington Mutual.

5. Termination.

(a) Either Washington Mutual or Employee may terminate Employee's employment at any time in its sole discretion, with or without advance notice. Except as expressly provided in this Agreement or under any employee benefit plan maintained by the Company or its Subsidiaries, upon termination of employment, Washington Mutual shall have no liability to pay any further compensation or any other benefit or sum whatsoever to Employee. Notwithstanding any other provision of this Agreement, this Agreement shall terminate and no further amounts or benefits shall be payable under this Agreement if, at least 120 days prior to a Change in Control (as defined below), Employee transfers to another Washington Mutual position and, under Washington Mutual's policies then in effect, persons occupying that position or a similar position are not eligible to receive a change in control agreement.

(b) Upon termination of employment, Employee's rights under all employee pension plans, employee welfare benefit plans, bonus plans and stock option and restricted stock plans shall be determined under the terms of the plans and grants themselves except as otherwise specifically provided in this Agreement.

(c) If (i) Employee's employment is terminated by Washington Mutual or its successor without "cause" (as defined below) upon or within two years after a Change in Control or (ii) Employee resigns for "good reason" (as defined below) upon or within two years after a Change in

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Control and no reason for Washington Mutual to terminate Employee for "cause" exists, then Employee shall be entitled to receive, within five business days after the effective date of such termination or resignation, from Washington Mutual or its successor, a lump sum equal to two times Employee's annual compensation. Notwithstanding the preceding, the amount paid to employee under this Section 5(c) shall be offset by any payment received by Employee from Washington Mutual or any acquired company pursuant to: (i) a severance or change in control agreement, arrangement or plan, with the exception of any such payment received more than two years before either clause (i) or clause (ii) of this Section 5(c) was satisfied, or (ii) The Worker Adjustment and Retraining Notification Act (WARN Act) or any similar state or local law.

(d) Upon a Change in Control, the lapse of the restrictions on Employee's restricted stock, restricted stock units, stock options and other equity awards shall automatically be accelerated (and, to the extent applicable, the option or other award shall be fully exercisable) unless the applicable award agreement provides otherwise.

(e) For purposes of Section 5(c), Employee's "annual compensation" shall equal the sum of (i) the highest of the Employee's annual base salary for the calendar year in which termination or resignation occurs, the prior calendar year, or the calendar year immediately preceding the year in which the Change in Control occurred, (ii) the highest of (A) the Employee's unadjusted target bonus for the calendar year in which the termination or resignation occurs, (B) the Employee's actual bonus (including, for the avoidance of doubt, any portion of the actual bonus that was deferred or exchanged at the Employee's election for equity awards) for the prior calendar year (annualized if Employee was not employed by Washington Mutual for the entire previous calendar year), or (C) the Employee's actual bonus (including, for the avoidance of doubt, any portion of the actual bonus that was deferred or exchanged at the Employee's election for equity awards) for the calendar year immediately preceding the year in which the Change in Control occurred (annualized if Employee was not employed by Washington Mutual for the entire such calendar year), and (iii) the amount of the contributions or accruals made or anticipated to have been made on Employee's behalf to the Company's or its Subsidiaries' benefit plans for the calendar year in which the termination or resignation occurs, including without limitation contributions to and accruals under qualified and nonqualified defined contribution and defined benefit pension plans and plans qualified under Section 125 of the Internal Revenue Code of 1986, as amended (the "Code"). For purposes of this Section 5(e), bonus refers to monthly, quarterly, annual and other periodic performance-based bonuses based on individual and/or company results, and excludes non-periodic lump sum bonuses (such as sign-on and retention bonuses (even if such bonuses are also performance-based bonuses) and cash and non-cash prizes and awards, including awards from sales contests) and the value of equity awards except as otherwise specifically provided herein.

(f) Notwithstanding the foregoing, if any payment described in Section 5(c) and the value of any lapse of restrictions under Section 5(d), together with any other payments or transfers of property, would constitute a "parachute payment" under Section 280G of the Code, or any successor statute then in effect, the aggregate payments by Washington Mutual or its successor pursuant to Section 5(c) shall be reduced to an amount that, when combined with the value of any lapse of restrictions under Section 5(d) and any other payments or transfers of property taken into account under Section 280G, is one dollar less than the smallest sum that would be considered to be a "parachute" payment.

(g) For purposes of this Agreement, "Change in Control" shall mean:

1. The acquisition of ownership, directly or indirectly, beneficially or of record, by any Person (as defined below) or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date of this

Agreement), other than the Company, a Subsidiary or any employee benefit plan of the Company, or its Subsidiaries, of shares representing more than 25% of (i) the common stock of the Company, (ii) the aggregate voting power of the Company's voting securities or (iii) the total market value of the Company's voting securities;

2. During any period of 25 consecutive calendar months, a majority of the Board of Directors of the Company (the "Board") ceasing to be composed of individuals (i) who were members of the Board on the first day of such period, (ii) whose election or nomination to the Board was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of the Board or (iii) whose election or nomination to the Board was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of the Board; provided that, any director appointed or elected to the Board to avoid or settle a threatened or actual proxy contest shall in no event be deemed to be an individual referred to in clauses (i), (ii) or (iii) above;

3. The good-faith determination by the Board that any Person or group (other than a Subsidiary or any employee benefit plan of the Company or a Subsidiary) has acquired direct or indirect possession of the power to direct or cause to direct the management or policies of the Company, whether through the ability to exercise voting power, by contract or otherwise;

4. The merger, consolidation, share exchange or similar transaction between the Company and another Person (other than a Subsidiary), other than a merger in which the stockholders of Washington Mutual immediately before such merger, consolidation or transaction own, directly or indirectly, immediately following such merger, consolidation or transaction, at least seventy-five percent (75%) of the combined voting power of the surviving entity in such merger, consolidation or transaction in substantially the same proportion as their ownership immediately before such merger, consolidation or transaction; or

5. The sale or transfer (in one transaction or a series of related transactions) of all or substantially all of the Company's assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary.

(h) For purposes of this Agreement:

1. "Person" shall mean any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

2. "Subsidiary" shall mean a corporation that is wholly owned by the Company, either directly or through one or more corporations that are wholly owned by the Company.

3. "Related Company" shall mean any entity that is directly or indirectly controlled by the Company or any entity in which the Company has a significant equity interest, as determined by the Human Resources Committee of the Board.

(i) For purposes of this Agreement, Washington Mutual shall have "cause" to terminate Employee's employment if:

1. Employee violates the Company's or Washington Mutual's policies regarding drug or alcohol use on a recurring basis;

2. Employee is convicted of any felony or of a misdemeanor involving moral turpitude (including forgery, fraud, theft or embezzlement) or enters into a pretrial diversion or similar program in connection with the prosecution for an offense involving dishonesty, breach of trust or money laundering; or

3. Employee has engaged in: (a) dishonesty or fraud, (b) destruction or theft of property of the Company or a Subsidiary, (c) physical attack on another employee, (d) willful malfeasance or gross negligence in the performance of Employee's duties, or (e) misconduct materially injurious to the Company or a Subsidiary.

(j) For purposes of this Agreement, "good reason" for Employee to resign shall mean the occurrence of any of the following events without Employee's consent, provided that the Employee in all events shall have resigned within two years after the Change in Control:

1. The assignment of duties to Employee which (a) are materially different from Employee's duties immediately prior to the Change in Control, or (b) result in Employee having significantly less authority and/or responsibility than Employee had prior to the Change in Control.

2. A reduction of Employee's total pay opportunity from that in effect on the date of the Change in Control. Changes in the allocation of Employee's compensation between salary and incentive compensation, and changes to the criteria or method for determining incentive compensation amounts actually earned, shall not constitute "good reason" for Employee to resign. "Total pay opportunity" means base salary plus target incentive compensation, provided that in the case of incentive compensation for which a "target" is not defined (such as some sales commissions), the incentive component of the pay opportunity shall be the average incentive compensation of Employee during the 24 months preceding the Change in Control.

3. A relocation by more than 50 miles of Employee's principal place of employment as in effect on the date of the Change in Control, if the relocation increases the distance between Employee's principal residence and principal place of employment by more than 25 miles. Distances shall be measured by surface miles, using surface transportation over public streets, roads, highways and waterways, by the shortest route.

(k) For purposes of this Agreement, Employee shall be considered to have resigned for "good reason" only if Washington Mutual fails to cure within 15 days after receiving a written demand to cure that specifies the circumstances constituting "good reason." Also, Employee shall be considered to have resigned for "good reason" only if the effective date of Employee's resignation is within 60 days after the effective date of the occurrence that constitutes "good reason."

6. Death or Disability. If Employee should die or become disabled at any time during his or her employment hereunder, neither Employee nor anyone claiming by, through or under him or her shall be entitled to any further compensation or other sum under this Agreement (but shall be entitled to payments made by insurers under policies of life and disability insurance and any sums which may become available under any employee benefit plan).

7. Confidentiality. Employee agrees that information not generally known to the public to which Employee has been or will be exposed as a result of Employee's employment by Washington Mutual is confidential information that belongs to the Company or its Subsidiaries. This includes information developed by Employee, alone or with others, or entrusted to Employee, or entrusted to the

Company or its Subsidiaries by its customers or others. The Company's and its Subsidiaries' confidential information includes, without limitation, information relating to the Company's or its Subsidiaries' trade secrets, know-how, procedures, purchasing, accounting, marketing, sales, customers, clients, employees, business strategies and acquisition strategies. Employee will hold the Company's and its Subsidiaries' confidential information in strict confidence and will not disclose or use it except as authorized by Washington Mutual and for Washington Mutual's benefit.

8. Possession of Materials. Employee agrees that upon conclusion of employment or request by Washington Mutual, Employee shall turn over to Washington Mutual all documents, files, office supplies and any other material or work product in Employee's possession or control that were created pursuant to or derived from Employee's services for Washington Mutual.

9. Resolution of Disputes. Any dispute arising out of or relating to this Agreement or Employee's employment (or termination of employment) shall be submitted to and resolved by final and binding arbitration as provided in the Binding Arbitration Agreement attached as Exhibit A, whether the claimant is Employee or Washington Mutual. Employee and Washington Mutual also agree to exhaust all remedies available under the Washington Mutual, Inc. Dispute Resolution Process, as in effect from time to time, before initiating arbitration; provided that Employee shall not be required to use or follow the Dispute Resolution Process before initiating arbitration of any claim that arises upon or within two years after a Change in Control. In any dispute in arbitration or court arising out of or relating to this Agreement, the losing party shall pay the prevailing party's reasonable attorneys' fees, costs and expenses.

10. Agreement Not To Solicit Personnel. In consideration for the mutual undertakings of the parties under this Agreement and Employee's access as an employee of Washington Mutual to employees, contractors and consultants of the Company and Related Companies, Employee agrees that, during Employee's employment with Washington Mutual, and for a period of one year following termination of employment, Employee will not in any manner, directly or indirectly, solicit, encourage, induce, or recruit any person who is then an employee, contractor, or consultant of the Company or a Related Company, and whom Employee worked with, supervised, or had access to confidential information about while employed by Washington Mutual, to seek or accept employment or a contractual or consulting engagement with any business that competes with or provides services comparable to those provided by the Company or its subsidiaries.

11. Intellectual Property Ownership. In addition, in consideration of the mutual undertakings of the parties under this Agreement, Washington Mutual will own all rights to the results of Employee's work, including inventions and other intellectual property developed using Company or its subsidiaries' equipment, supplies, facilities or trade secret information. It will also own all rights to the results of any other effort of Employee (outside of Employee's performance of Washington Mutual work) that relate directly to Employee's work or to the Company's or its subsidiaries' business or actual or demonstrably anticipated research or development. Washington Mutual's rights extend to anything that is authored, conceived, invented, written, reduced to practice, improved or made by Employee, alone or jointly with others, during the period of Employee's employment by Washington Mutual. To the extent that the results of Employee's work or other effort constitute a "work made for hire" as defined under U.S. copyright law, the copyright shall belong solely to Washington Mutual. Otherwise, to the extent that such results are legally protectable, then Employee hereby irrevocably assigns all copyrights, patent rights, and other proprietary rights therein to Washington Mutual, and no further action by Employee is required to grant ownership to Washington Mutual. Employee will assist in preparing and executing documents, and will take any other steps requested by Washington Mutual, to vest, confirm or demonstrate its ownership rights, and Employee will not at any time contest the validity of such rights.

Employee understands that the termination of Employee's employment will not terminate or invalidate any of Employee's obligations, or Washington Mutual's rights, as described above.

Employee understands that the above commitments are in furtherance of the WaMu Intellectual Property Policy (a copy of which Employee has had an opportunity to review and is also found on wamu.net), which is incorporated herein but not set forth in full due to space limitations. If Employee lives or works in Washington, California, Illinois, or in any other state mentioned in the Invention Notice section of the policy, then the above assignment does not apply to inventions described in the Invention Notice for Employee's state.

12. Remedies for Certain Breaches Related to Solicitation and Intellectual Property. Should Employee breach the agreements set forth in Section 10 or 11, in addition to any other remedy available to Washington Mutual, (a) the Employee shall immediately pay to Washington Mutual any payment made pursuant to Section 5(c); (b) pursuant to the relevant award agreements, any option that vested upon a Change in Control ("Option"), or portion of such Option, that remains unexercised shall terminate and cease to be exercisable; (c) pursuant to the relevant award agreements, for any Option, or portion of such Option, already exercised, Employee shall immediately pay to Washington Mutual any difference between the fair market value of the Option shares on the date of exercise and the exercise price of such Option shares; and (d) pursuant to the relevant award agreements, Employee will immediately pay to Washington Mutual the fair market value as of the Change in Control of any shares of restricted stock that vested upon a Change in Control. The parties agree that, to the extent the restrictions set forth in Sections 10 and 11 and this Section 12 are found to be unenforceable in any respect, this Section 12 shall be construed to be enforceable to the maximum extent permitted by law.

13. Miscellaneous.

(a) This Agreement is the entire agreement between the parties and may not be modified or abrogated orally or by course of dealing, but only by another instrument in writing duly executed by the parties. This Agreement replaces and supersedes all prior agreements on these subjects that Employee may have with the Company, or any Subsidiary, provided, however, that this Agreement shall supplement and shall not supersede any other agreement that Employee has signed in favor of the Company or any Subsidiary protecting the confidentiality of its confidential information or its interest in intellectual property. All such agreements remain in full force and effect. Employee acknowledges that Employee shall be entitled to change in control benefits, severance benefits or other employment separation benefits only as specifically provided in this Agreement (or, to the extent applicable according to its terms, as provided in the Washington Mutual, Inc. Special Severance Plan as in effect from time to time), notwithstanding the terms of any other representation, policy, severance plan, benefit plan or agreement.

(b) Notwithstanding any provision of this Agreement to the contrary, if, at the time of Employee's termination of employment with Washington Mutual, he or she is a "specified employee" as defined in Section 409A of the Code, and one or more of the payments or benefits received or to be received by Employee pursuant to this Agreement would constitute deferred compensation subject to Section 409A, no such payment or benefit will be provided under this Agreement until the earlier of (a) the date that is six (6) months following Employee's termination of employment with Washington Mutual, or (b) the Employee's death. The provisions of this Section 13(b) shall only apply to the extent required to avoid Employee's incurrence of any penalty tax or interest under Section 409A of the Code or any regulations or Treasury guidance promulgated thereunder. In addition, if any provision of this Agreement would cause Employee to incur any penalty tax or interest under Section 409A of the Code or any regulations or Treasury guidance promulgated thereunder, Washington Mutual may reform such

Cannon, Kimberly Ann u131809

provision to maintain to the maximum extent practicable the original intent of the applicable provision without violating the provisions of Section 409A of the Code.

(c) This Agreement has been drafted in contemplation of and shall be construed in accordance with and governed by the law of the state of Employee's principal place of employment with Washington Mutual.

(d) Employee acknowledges that this Agreement has been drafted by counsel for Washington Mutual, and that Employee has not relied upon such counsel with respect to this Agreement.

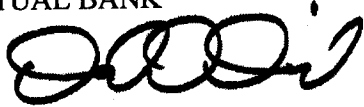
(e) If a court or arbitrator of competent jurisdiction or governmental authority declares any term or provision hereof invalid, unenforceable or unacceptable, the remaining terms and provisions hereof shall be unimpaired and the invalid, unenforceable or unacceptable term or provision shall be replaced by a term or provision that is valid, enforceable and acceptable and that comes closest to expressing the intention of the invalid, unenforceable or unacceptable term or provision.

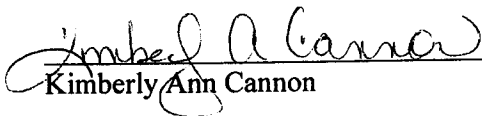
(f) Employee may not assign Employee's rights or delegate Employee's duties under this Agreement.

Washington Mutual may assign its rights and delegate its duties under this Agreement to the Company or any Subsidiary or to any purchaser of all or substantially all of Washington Mutual's assets. The transfer of Employee's employment from Washington Mutual to any other Subsidiary or to the purchaser of all or substantially all of the assets of Washington Mutual shall not be considered a termination of employment, but this Agreement shall run to the benefit of, and be binding upon, the new employer. In the event of a Change in Control, this Agreement shall bind, and run to the benefit of, the successor to Washington Mutual resulting from the Change in Control.

DATED effective as of the 17th of December 2007.

WASHINGTON MUTUAL: WASHINGTON MUTUAL BANK

By 
Daryl D. David
Executive Vice President
Chief Human Resources Officer

EMPLOYEE: 
Kimberly Ann Cannon

Dec 21, 2007
DATE

EXHIBIT A
BINDING ARBITRATION AGREEMENT

This Binding Arbitration Agreement is a part of, and incorporated into, that certain Change in Control Agreement between the parties dated effective as of December 17, 2007. I, the employee who is a party to the Change in Control Agreement to which this Exhibit is attached, as well as Washington Mutual, agree as follows:

1. Any and all disputes that involve or relate in any way to my employment (or termination of employment) with Washington Mutual shall be submitted to and resolved by final and binding arbitration.

2. Washington Mutual and I understand that, by entering into this Binding Arbitration Agreement, we are each waiving any right we may have to file a lawsuit or other civil action or proceeding relating to my employment with Washington Mutual, and are waiving any right we may have to resolve employment disputes through trial by jury. We agree that arbitration shall be in lieu of any and all lawsuits or other civil legal proceedings relating to my employment.

3. This Binding Arbitration Agreement is intended to cover all civil claims that involve or relate in any way to my employment (or termination of employment) with Washington Mutual, including, but not limited to, claims of employment discrimination or harassment on the basis of race, sex, age, religion, color, national origin, sexual orientation, disability and veteran status (including claims under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act ("ERISA"), the Fair Labor Standards Act, the Immigration Reform and Control Act and any other local, state or federal law concerning employment or employment discrimination), claims based on violation of public policy or statute, and claims against individuals or entities employed by, acting on behalf of, or affiliated with Washington Mutual. However, ERISA plan benefit issues and claims for workers compensation or for unemployment compensation benefits are not covered by this Binding Arbitration Agreement. The statutes of limitations otherwise applicable under law shall apply to all claims made in the arbitration.

4. I understand and agree that, despite anything in this Binding Arbitration Agreement to the contrary, I am not waiving the right to file or institute a complaint or charge with any government agency authorized to investigate or resolve employment-related matters, including but not limited to the United States Equal Employment Opportunity Commission, the Department of Labor, the Occupational Safety and Health Administration, the National Labor Relations Board, the Office of Special Counsel for Unfair Immigration-Related Employment Practices or other appropriate immigration authorities, and any other comparable local, state or federal agency. I also understand and agree that, despite anything in this Binding Arbitration Agreement to the contrary, either party may request a court to issue such temporary or interim relief (including temporary restraining orders and preliminary injunctions) as may be appropriate, either before or after arbitration is commenced. The temporary or interim relief may remain in effect pending the outcome of arbitration. No such request shall be a waiver of the right to submit any dispute to arbitration.

5. This Binding Arbitration Agreement does not constitute an employment contract, require discharge only for cause, or require any particular corrective action or discharge procedures.

6. Arbitration under this Binding Arbitration Agreement shall be conducted before a single arbitrator and shall take place within the state where I am currently employed by Washington Mutual, or where I was so employed at the time of termination.

7. In order to initiate arbitration, Washington Mutual or I must notify the other party in writing of its decision to initiate arbitration, either by personal delivery or certified mail. The notification should include the following information about the employee: name, home address, work address, work and home phone number, and the following information about the occurrence: date, location, nature of the claims or dispute, facts upon which the claims are made, and remedy requested. Any notice of arbitration initiated by Washington Mutual shall be sent to my last known residence address as reflected in my personnel file at Washington Mutual. Notice of arbitration initiated by me shall be sent to Washington Mutual's Legal Department, attention General Counsel - Litigation. The Legal Department's address is currently Washington Mutual, 1301 Second Ave., WMC: 3501, Seattle, Washington 98101.

8. Within thirty (30) days after receipt of notice of arbitration, Washington Mutual and I will attempt to agree upon a mutually acceptable arbitrator. If Washington Mutual and I are unable to agree upon an arbitrator, we will submit the dispute to the American Arbitration Association ("AAA"). If AAA is, for some reason, unable or unwilling to accept the matter, we will submit the matter to a comparable arbitration service. The arbitration shall be conducted in accordance with the laws of the state in which the arbitration is conducted and the rules and requirements of the arbitration service being utilized, to the extent that such rules and requirements do not conflict with the terms of this Binding Arbitration Agreement.

9. At the request of either Washington Mutual or myself, the arbitrator will schedule a pre-hearing conference to, among other things, agree on procedural matters, obtain stipulations, and attempt to narrow the issues.

10. During the arbitration process, Washington Mutual and I may each make a written demand on the other for a list of witnesses, including experts, to be called and/or copies of documents to be introduced at the hearing. The demand must be served at least thirty (30) days prior to the hearing. The list and copies of documents must be delivered within twenty-five (25) days of service of the demand.

11. Each party shall be entitled to conduct a limited amount of discovery prior to the arbitration hearing. Each party may take a maximum of two (2) depositions. Each party may apply to the arbitrator for further discovery. Such further discovery may, in the discretion of the arbitrator, be awarded upon a showing of sufficient cause. If any documents to be produced or requested for production contain or refer to matters that are private, proprietary and/or confidential, the arbitrator shall make an appropriate protective order prohibiting or limiting use and disclosure of such documents and providing for return of documents produced after the arbitration is concluded.

12. Each party may file a brief with the arbitrator. Each brief must be served on the arbitrator and the other party at least five (5) working days prior to the hearing and, if not timely served, must be disregarded by the arbitrator. The brief shall specify the facts the party intends to prove, analyze the applicable law or policy, and specify the remedy sought. At the close of the hearing, each party shall be given leave to file a post-hearing brief. The time for filing the post-hearing brief shall be set by the arbitrator.

13. I understand that, at my expense, I have the right to hire an attorney to represent me in the arbitration, and Washington Mutual has that same right. I also understand that all parties shall have the right to present evidence at the arbitration, through testimony and documents, and to cross-examine witnesses called by another party. Each party agrees to pay the fees of any witnesses testifying at that party's request. Each party also agrees to pay the cost of any stenographic record of the arbitration hearing should that party request any such record. The requesting party must notify the other of such arrangements at least two (2) working days in advance of the hearing.

14. Any postponement or cancellation fee imposed by the arbitration service will be paid by the party requesting the postponement or cancellation. During the time the arbitration proceedings are ongoing, Washington Mutual will advance any required administrative or arbitrator's fees. Each party will pay its own witness fees.

15. At the conclusion of the arbitration, each party agrees to promptly pay any arbitration award against it.

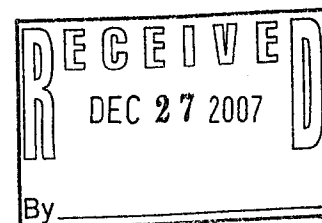
16. We agree that the decision of the arbitrator shall be final and binding on all parties and shall be the exclusive remedy of the parties. The arbitrator shall issue a written and signed statement of the basis of his or her decision, including findings of fact and conclusions of law. In making the decision and award, if any, the arbitrator shall apply applicable substantive law. The arbitrator may only award a remedy that would have been available in court. The decision and award, if any, shall be consistent with the terms of this Binding Arbitration Agreement and shall include an allocation of the costs of the arbitration proceeding between the parties.

17. This Binding Arbitration Agreement may be enforced by a court of competent jurisdiction through the filing of a petition to compel arbitration, or otherwise. The decision and award of the arbitrator may also be judicially enforced pursuant to applicable law.

18. Because of the interstate nature of Washington Mutual's business, this Binding Arbitration Agreement is governed by the Federal Arbitration Act, 9 U.S.C. §1 et seq. (the "FAA"). The provisions of the FAA (and to the extent not preempted by the FAA, the provisions of the laws of the state of my principal place of employment with Washington Mutual that generally apply to commercial arbitration agreements, such as provisions granting stays of court actions pending arbitration) are incorporated into this Binding Arbitration Agreement to the extent not inconsistent with the other terms of this Binding Arbitration Agreement.

19. We agree that, if any provision of this Binding Arbitration Agreement is found to be unenforceable to any extent or in violation of any statute, rule, regulation or common law, it will not affect the enforceability of the remaining provisions and the court shall enforce the affected provision and all remaining provisions to the fullest extent permitted by law.

20. This Binding Arbitration Agreement shall remain in full force and effect at all times during and subsequent to my employment with Washington Mutual, or any successor in interest to Washington Mutual.



COPY

**FIRST AMENDMENT TO
CHANGE IN CONTROL AGREEMENT**

WHEREAS, Washington Mutual, Inc. or a subsidiary thereof ("Washington Mutual") and Kimberly Ann Cannon ("Employee") are parties to a Change in Control Agreement dated as of December 17, 2007 (the "Agreement");

WHEREAS, the parties wish to amend the Agreement to provide that Employee shall be entitled to a "modified gross-up" of the excise tax imposed on Employee pursuant to Section 4999 of the Internal Revenue Code of 1986, as amended, to the extent any payments under the Agreement or otherwise are "parachute payments" subject to such excise tax;

NOW, THEREFORE, Section 5(f) of the Agreement is hereby replaced in its entirety with the following, effective upon execution of this First Amendment by Employee and an authorized representative of Washington Mutual:

If Employee becomes entitled to the payments and equity acceleration described in Sections 5(c) and 5(d) and such payments and benefits, together with any other payments or transfers of property (collectively the "Severance Payments"), constitute "parachute" payments under Section 280G of the Code, then:

1. If the Severance Payments exceed three times Employee's "base amount" (as defined in Section 280G of the Code) by less than ten percent (10%), then the payments described in Section 5(c) shall be reduced to an amount that, when combined with lapse of restrictions under Section 5(d) and any other payments or transfers at property taken into account under Section 280G, is one dollar less than the smallest sum that would be considered to be a "parachute" payment; or
2. If the Severance Payments exceed three times Employee's base amount by ten percent (10%) or more, then Washington Mutual shall pay an additional amount (the "Gross-Up Payment") to Employee. The Gross-Up Payment shall be equal to the amount necessary so that the net amount retained by Employee, after subtracting the parachute excise tax imposed by Section 4999 of the Code, as amended, or any successor statute then in effect (the "Excise Tax"), and after also subtracting all federal, state or local income tax, FICA tax and Excise Tax on the Gross-Up Payment, shall be equal to the net amount Employee would have retained if no Excise Tax has been imposed and no Gross-Up Payment had been paid. The amount of the Gross-Up Payment shall be determined in good faith by nationally recognized registered public accountants or tax counsel selected by the Company, who shall apply the following assumptions: (i) Employee shall be treated as paying federal income taxes at the highest marginal rate in the calendar year in which the Gross-Up Payment is made, and (ii) Employee shall be treated as paying state and local income taxes at the highest marginal rate(s) in the calendar year in which the Gross-Up Payment is made in the locality of Employee's residence as of the effective date of Employee's termination or resignation, net of the maximum reduction in federal income taxes that could be

obtained from deducting those state and local taxes. The Gross-Up Payment shall be made within five business days after the effective date of Employee's termination or resignation, provided that if the Gross-Up Payment cannot be determined within that time, the Company shall pay Employee within that time an estimate, determined in good faith by Washington Mutual, of the minimum amount of the Gross-Up Payment and shall pay the remainder (plus interest at the rate provided in Section 1274(b)(2)(B) of the Code) as soon as the amount can be determined but in no event later than the 30th day after the effective date of Employee's termination or resignation. If the estimated payment is more than the amount later determined to have been due, the excess (plus interest at the rate provided in Section 1274(b)(2)(B) of the Code) shall be repaid by Employee within five business days after written demand. In all events, any Gross-Up Payment made pursuant to this Section 5(f) shall be paid to Employee no later than the end of the calendar year following the year in which the related taxes are remitted to the applicable taxing authority. If the actual Excise Tax imposed is less than the amount that was taken into account in determining the amount of the Gross-Up Payment, Employee shall repay at the time that the amount of the reduced Excise Tax is finally determined the portion of the Gross-Up Payment attributable to that reduction (plus the portion of the Gross-Up Payment attributable to the Excise Tax, FICA tax and federal, state and local income tax imposed on the portion of the Gross-Up Payment being repaid by Employee, to the extent the repayment results in a reduction in or refund of Excise Tax, FICA tax or federal, state or local income tax), plus interest on the amount of the repayment at the rate provided in Section 1274(b)(2)(B) of the Code. If the actual Excise Tax imposed is more than the amount that was taken into account in determining the amount of the Gross-Up Payment, Washington Mutual shall make an additional Gross-Up Payment in respect of such excess (plus interest at the rate provided in Section 1274(b)(2)(B) of the Code) at the time that the amount of the excess is finally determined.


NOW, THEREFORE, the remainder of the Agreement shall remain in full force and effect.

[Remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the 19th day of March, 2008.

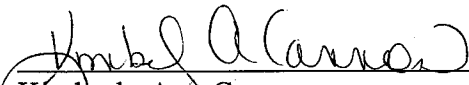
WASHINGTON MUTUAL:

WASHINGTON MUTUAL

By 

Daryl D. David
Executive Vice President
Chief Human Resources Officer

EMPLOYEE:



Kimberly Ann Cannon

100405132_1.DOC

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

In re:	)	Chapter 11
	)	Case No. 08-12229 (MFW)
Washington Mutual, Inc., <i>et al.</i> , ¹	)	(Jointly Administered)
)	
Debtors.	)	Ref. Docket No. _____
)	

ORDER

On this _____ day of _____, 2013, having considered *Motion of Kimberly Cannon for Order Granting Leave to File Amendment to Proof of Claim No. 1248 or, in the Alternative, Allowing Kimberly Cannon to Assert Alternate Argument Regarding Claim Based on WaMu Severance Plan* (the “**Motion**”), and any responses thereto;

IT IS HEREBY ORDERED that, for the reasons stated on the record, the Motion is GRANTED; and

IT IS FURTHER ORDERED that the amended proof of claim may be filed within fifteen (15) days of the date of this Order; and

IT IS FURTHER ORDERED the Court retains jurisdiction with respect to all matters arising from or related to the implementation this Order.

Wilmington, Delaware

THE HONRABLE MARY F. WALRATH
U.S. Bankruptcy Court Judge

¹ The Debtors in these cases are: Washington Mutual, Inc. and WMI Investment Corp.

CERTIFICATE OF SERVICE

I, Celeste A. Hartman, Senior Paralegal, do hereby certify that I am over the age of 18 and that on February 1, 2013, I caused a copy of *Motion of Kimberly Cannon for Order Granting Leave to File Amendment to Proof of Claim No. 1248 or, in the Alternative, Allowing Kimberly Cannon to Assert Alternate Argument Regarding Claim Based on WaMu Severance Plan* to be served upon all persons receiving notice through the Court's cm/ecf system with a courtesy copy on the following via email:

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abbe.miller@weirpartners.com
Jane.M.Leamy@usdoj.gov

Under penalty of perjury, I certify the foregoing to be true and correct.

/s/ Celeste A. Hartman
CELESTE A. HARTMAN