

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

In re:)	Chapter 11
)	
Washington Mutual, Inc., <u>et al.</u> ,)	Case No. 08-12229 (MFW)
)	
Debtors.)	(Jointly Administered)
)	
)	Obj Deadline: March 21, 2013 @ 4:00 p.m.
)	Hrg Date: April 23, 2013 @ 2:00 p.m.

**MOTION OF PATRICIA SCHULTE FOR LEAVE TO AMEND HER PROOF OF
CLAIM TO ASSERT AN ALTERNATIVE THEORY OF RECOVERY**

Patricia Schulte (“Claimant”), by and through her undersigned counsel, hereby moves (the “Motion”), pursuant to Rule 15 of the Federal Rules of Civil Procedure (the “Bankruptcy Rules”), for leave to amend her proof of claim, to the extent necessary, in order to assert an alternate theory of recovery under the WaMu Severance Plan (the “Severance Plan”). In support of this Motion, Claimant respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to hear this Motion pursuant to 28 U.S.C. §§ 1334 and 157. The Motion presents a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. § 1408.

FACTUAL AND BACKGROUND

I. WMI Bankruptcy

2. Washington Mutual, Inc. (“WMI”) and a related entity, WMI Investment Corp. (collectively with WMI, the “Debtors”) each filed voluntary petitions under Chapter 11 of title 11, United States Code (the “Bankruptcy Code”) and commenced the above-captioned cases on September 26, 2008 (the “Petition Date”). The Debtors remained in possession and control of their assets until they confirmed their Seventh Amended Joint Plan of Affiliated Debtors



Pursuant to Chapter 11 of the United States Bankruptcy Code (the “Plan”) by Order dated February 23, 2012. Upon information and belief the effective date of the Plan was March 19, 2012. On the effective date certain of the Debtors’ assets were transferred to the WMI Liquidating Trust (the “WMILT”) for administration under the Plan.

3. At all relevant times prior to September 25, 2008, WMI owned Washington Mutual Bank (“WMB”) and through its ownership of WMB, indirectly owned WMB’s subsidiaries including Washington Mutual Bank.

4. On September 25, 2008, the director of the Office of Thrift Supervision directed the FDIC to take immediate possession of the assets of WMB as receiver. The FDIC in its role as receiver then sold substantially all of the assets of WMB to JPMorgan Chase Bank, National Association (“JPMC”). The assets of WMB constituted, indirectly, substantially all of the operating banking assets of WMI.

II. Claimant’s Claim

1. Prior to September 25, 2008, Claimant was employed by WMB. As part of her employment, Claimant was party to a Change in Control Agreement with WMB (the “CIC”), a true and correct copy of which is attached hereto as Exhibit A. Pursuant to her CIC, Claimant was entitled to 200% of her annual compensation if her employment was terminated without cause or she resigned under certain circumstances within two years following a “change in control”.

2. For the purposes of her CIC a “change in control” was defined in paragraph 1(f)(5) of her CIC to include “[t]he sale or transfer (in one transaction or a series of related transactions) of all or substantially all of Washington Mutual, Inc.’s assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary.” Claimant

believes, and therefore avers, that the FDIC seizure and subsequent sale of assets to assets. Claimant believes, and therefore avers, that the sale or transfer of substantially all of WMI's operating banking assets to JPMC constituted a "change in control" pursuant to the CIC.

3. Following the seizure and sale, Claimant's duties and compensation were changed dramatically and negatively by JPMC. At the time of the seizure and sale, Claimant resided in Seattle Washington. Following the sale, the only employment offered Claimant was in New York City or London. No positions were offered to Claimant in Seattle or anywhere on the West Coast. As a result, Claimant remained with JPMC only to assist with the transition; however, Claimant's transition agreement expired by its terms on October 1, 2009 and Claimant was not offered any other employment with JPMC.

4. Pursuant to her CIC, Claimant is entitled to 200% of her total compensation because she was terminated following a change in control. In 2008, Claimant's gross compensation was approximately \$400,890 for CIC compensation purposes.

5. Claimant filed Proof of Claim number 1092 in the amount of \$862,471.77 with respect to the compensation due to her under her CIC and the WMI Supplemental Executive Retirement Accumulation Plan.

III. Claim Objection

6. On August 15, 2012, WMILT filed the Seventy-Ninth Omnibus (Substantive) Objection to Claims (the "Objection"). Pursuant to the Objection, WMILT objected to the Claim on the basis that (i) no change in control occurred under the CIC; and (ii) the Claim was purportedly filed against the wrong party. On December 13, 2012, Claimant filed her response to the Objection.

IV. Severance Plan

7. In addition to the CIC, Claimant was covered under the Severance Plan, which provided certain levels of severance pay to employees based on the length of employment and their level of employment.¹ The sponsor and administrator of the Severance Plan is WMI and the Severance Plan is funded from the general assets of WMI.

8. The Severance Plan 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.

9. Pursuant to the Severance Plan, Claimant, as a Level 4 employee, was entitled to four weeks of severance for each year of service. Claimant’s claim under the Severance Plan is \$110,333.80.

10. 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 Severance Plan. Specifically, the 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.

RELIEF REQUESTED

11. By this Motion, Claimant seeks to amend the Claim to include an alternative theory of recovery, to the extent necessary, based on the Severance Plan.

¹ A copy of the Severance Plan is attached hereto as Exhibit B.

BASIS FOR RELIEF REQUESTED

12. By this Motion, Claimant requests the entry of an order authorizing Claimant to amend the Claim or, in the alternative, allowing Claimant to assert an alternative theory of recovery based on the Severance Plan. Claimant's proposed amended proof of claim includes an alternate claim under the Severance Plan which is sponsored by WMI. Claimant's proposed amendment will not alter the claim amount in anyway. Claimant merely seeks leave to include language in the addendum to the proof of 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 liable for obligations under the Change in Control Agreement, then Claimant is entitled to severance pay in the amount of \$110,333.80 pursuant to the Severance Plan." A true and correct copy of the proposed amended claim is attached hereto as Exhibit C and incorporated herein by this reference (the "Amended Claim").

13. 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 Severance Plan at the hearing on the Objection.

I. Legal Standard

14. Bankruptcy Rule 7015 provides that amendments to claims shall be governed by Rule 15 of the Federal Rules of Civil Procedure, Fed. R. Bankr. P. 7015, which commits the decision to grant or deny leave to amend to the trial court's sound discretion. See also, Coventry v. United States Steel Corp., 856 F.2d 514, 518 (3d Cir. 1988). Amendments to timely proofs of claim are liberally allowed. In re Trans World Airlines, Inc., 145 F.3d 124, 140 (3d Cir. 1998). This court has previously stated with regard to amendments to proofs of claim:

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 date amendment to change status of the claim.

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

15. 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 (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. BAP 1988); United States v. Hougham, 364 U.S. 310, 316 (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).

II. The Amended Claim Satisfies The Requirements Of Rule 15

16. Claimant seeks only to amend her proof of claim to plead a new theory of recovery based on the same facts as asserted in her original proof of claim. There is no prejudice to WMILT or the estates in allowing Claimant to amend her proof of claim. The amendment to the proof of claim will be in the alternative as Claimant only asserts a claim under the Severance Plan to the extent that her claim based on the CIC is disallowed. As a result, the Amended Claim seeks the same amount as the Claim – this is the amount she is owed pursuant to the CIC following a change-in-control at the WMI level. Claimant merely seeks to include the claims pursuant to the Severance Plan in the Amended Claim as an alternative theory of recovery. Claimant is not “double dipping” her claims. Indeed, WMILT has already accounted for the amount they would have to pay under the amended claim because it is the **same** amount as in the

existing Claim. Likewise, the basis for the amended claim is the same – a change in control at WMI. In short, the Claim “provides notice of the existence, nature, and amount of the amended claim.” Id.

17. Claimant does not seek to add a new claim or change the status of the existing claims; rather the amended claim merely provides a new theory of recovery for the original Claim. At the time of filing the Claim, Claimant was (and she remains) confident that the Debtors are liable for paying the change-in-control benefit owed him pursuant to the CIC. At the time, Claimant saw no reason for making an alternative claim based on the Severance Plan, because she believed that the change-in-control benefit under the CIC and under the Severance Plan were one in the same. However, the ongoing discovery process in this matter has provided some much-needed clarification on the interaction between the CIC and the Severance Plan.

18. Finally, Claimant has acted in good faith. The amended proof of claim is not changing the basis for, the status of, or the amount of, Claimant’s potential recovery. It is a claim based on the loss of Claimant’s job following a change in control at WMI – this is the same basis for the Claim.

19. The United States Supreme Court in Foman v. Davis, 371 U.S. 178 (1962), referred to several factors courts should analyze when determining whether leave to amend should be permitted:

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 rules require, be “freely given.”

Foman, 371 U.S. at 182. The Third Circuit has adopted the “Foman Factors” in determining whether leave to amend was appropriate. 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.

20. In reviewing the factors set forth in the Foman and Burlington Coat cases, leave to amend is plainly warranted in this case. Claimant has acted promptly and without undue delay; Claimant has not acted in bad faith; Claimant has no dilatory motive (and, in fact, seeks a prompt resolution of the Objection so that she may receive a distribution on account of the Claim; there is no prejudice to WMILT as the underlying facts relied upon in the Amended Claim are the same as the Claim and do not require further discovery; and the requested amendment is not futile as the Severance Plan plainly provides for payment in the event that Claimant is not entitled to payment under the CIC. In light of these factors, the proposed amendment should be permitted.

WHEREFORE, For all the above reasons, Claimant requests that the Court enter an order (i) permitting Claimant to amend the Claim, to the extent necessary, in order to assert an alternative theory of recovery under the Severance Plan and (ii) granting such other and further relief as is just and equitable.

Date: February 28, 2013
Wilmington, Delaware

Respectfully submitted,

/s/ Michael Busenkell
Michael Busenkell (DE 3933)
Gellert Scali Busenkell & Brown, LLC
913 N. Market Street, 10th Floor
Wilmington, DE 19801
(302) 425- 5800
(302) 425-5814 Facsimile
mbusenkel@gsbblaw.com

Attorneys for Patricia Schulte

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FOR THE DISTRICT OF DELAWARE**

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) Obj Deadline: March 21, 2013 @ 4:00 p.m.
) Hrg Date: April 23, 2013 @ 2:00 p.m.

NOTICE OF MOTION

PLEASE TAKE NOTICE that Patricia Schulte (“Schulte”) filed the Motion Of Patricia Schulte For Leave To Amend Her Proof Of Claim To Assert An Alternative Theory Of Recovery (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

You are required to file with the Court any response to the Motion on or before **March 21, 2013 at 4:00 p.m.** (the “Objection Deadline”). At the same time, you must also serve a copy of any response upon counsel for Schulte.

A hearing on the Motion shall be held before the Honorable Mary F. Walrath on **April 23, 2013, at 2:00 p.m.** at the United States Bankruptcy Court for the District Of Delaware, 824 Market Street, 5th Floor, Courtroom #4, Wilmington, Delaware.

IF YOU DO NOT PROPERLY FILE AND SERVE AN OBJECTION OR OTHER RESPONSE TO THE MOTION BY THE OBJECTION DEADLINE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: February 28, 2013

GELLERT SCALI BUSENKELL &
BROWN, LLC

By: /s/ Michael B usenkell

Michael Busenkell (DE Bar No. 3933)
913 Market Street, 10th Floor
Wilmington, DE 19801
(302) 425-5812
(302) 425-5814 Fax
mbusenkell@gsbblaw.com

Attorneys for Patricia Schulte

EXHIBIT A

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

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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.

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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 incurrance 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

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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;

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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

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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:

Patricia Schulte

DATE

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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.

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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.

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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.

EXHIBIT B

WaMu Severance Plan

**Amended and Restated
Effective January 1, 2008**

#168864 v. 1

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Confidential

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PREAMBLE

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 a 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 companies are set forth in appendixes to this document. The Plan is intended to be a welfare benefit plan governed by ERISA and is intended to constitute a single plan.

SECTION 1. DEFINITIONS

For the purpose of this Plan, the following definitions shall apply unless the context requires otherwise. Words used in the masculine gender shall apply to the feminine, where applicable, and wherever the context of the Plan dictates, the plural shall be read as the singular and the singular as the plural. The words "Section" or "Section" in this Plan shall refer to an Section or Section of this Plan unless specifically stated otherwise. Compounds of the word "here" such as "herein" and "hereof" shall be construed to refer to another provision of this Plan, unless otherwise specified or required by the context. It is the intention of the Company that the Plan be governed the provisions of the Code and ERISA and that all its provisions shall be construed to that result.

In determining the time within which an event or action is to take place for purposes of the Plan, no fraction of a day shall be considered, and any act, the performance of which would fall on a Saturday, Sunday, holiday or other non-business day, may be performed on the next following business day.

1.1 Acquired Company. Any company or part of a company acquired by the Company either through an asset purchase or stock purchase.

1.2 Base Pay. Base Pay includes salary, but does not include bonus, commissions, incentives (except as noted in this Section 1.2) or any other compensation. For salaried employees, weekly Base Pay means annual salary divided by Fifty Two (52). For hourly employees, weekly Base Pay means base hourly rate times Forty (40). Base Pay includes incentives and commissions, but only if they are guaranteed or are not dependent upon achievement of certain goals or objectives.

1.3 Basic Program. The portion of the Severance Plan set forth in this document, not including the appendixes.

1.4 Cause. Any of the following shall constitute cause:

- (a) Participant violates the Company's policies regarding drug or alcohol use on a recurring basis,

(b) Participant 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

(c) Participant 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 Participant's duties, or (e) misconduct materially injurious to the Company.

1.5 Change in Control. Any of the following shall constitute a Change in Control:

(a) 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 amended from time to time), other than Washington Mutual, Inc., a Subsidiary or any employee benefit plan of the Company, of shares representing more than 25% of (i) the common stock of Washington Mutual, Inc., (ii) the aggregate voting power of Washington Mutual, Inc.'s voting securities or (iii) the total market value of Washington Mutual, Inc.'s voting securities;

(b) During any period of 25 consecutive calendar months, a majority of the board of directors of Washington Mutual, Inc. (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;

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

(d) The merger, consolidation, share exchange or similar transaction between Washington Mutual, Inc. and another Person (other than a Subsidiary) other than a merger in which the stockholders of Washington Mutual, Inc. 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

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

(f) The following definitions shall apply for purposes of Section 1.5:

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.

1.6 Code. The Internal Revenue Code of 1986, as amended.

1.7 Company. Washington Mutual, Inc. and its subsidiaries and affiliates.

1.8 Eligible Employee. Any "regular" employee of the Company who is scheduled to work at least 20 hours per week. The following are not considered Eligible Employees:

(a) workers hired through a contract with any other unrelated entity, including but not limited to contingent staffing companies, professional employer organizations, temporary agencies or other similar entities;

(b) employees hired for a fixed or limited term;

(c) employees who are classified in the Company's Human Resources Information System as "fully commissioned" are not eligible to participate in the Plan even if they receive a minimum incentive, guaranteed incentive or other similar payments; and

(d) an individual who is classified as an independent contractor or another non-employee position by the Company even if such individual is subsequently reclassified by a court of law or a regulatory body as a common law employee of the Company.

1.9 ERISA. The Employee Retirement Income Security Act of 1974, as amended.

1.10 Job End Date. The date a Participant's job is to be eliminated. Job End Date will be set forth in the notice issued pursuant to Section 4 and is subject to change in accordance with

that Section. "Original Job End Date" refers to the date set forth in the first notice without regard to any acceleration or extension of that date.

1.11 Job Elimination. Has the meaning set forth in Section 2.3.

1.12 Notification. Has the meaning set forth in Section 4.

1.13 Participant. An Eligible Employee who becomes eligible for benefits under this Plan by satisfying the requirements of Section 2.

1.14 Plan. The Severance Plan, as amended from time to time. The Plan is comprised of this document (the "Basic Program") and any appendixes attached hereto (the "Acquisition Programs").

1.15 Severance Agreement. A written agreement provided by the Company by which a Participant releases any claims he might have against the Company in exchange for the benefits set forth in Section 3 which the Company is not otherwise obligated to provide.

1.16 Termination Date. The last active day of employment. For these purposes, an employee will be deemed to have terminated on the last day of employment at 5:00 p.m. in the Participant's time zone.

1.17 Service. A "Year of Service" means a full year of continuous employment with Company measured on each anniversary date from the Participant's date of hire. Partial years will be ignored. Years of service will be calculated by using Participant's hire date and Termination Date. For purposes of this calculation, hire date will be the Participant's latest hire date. Prior service with the Company or Acquired Companies shall not be counted toward Years of Service unless otherwise specified in an appendix to the Plan. In the case of an acquisition, Years of Service will be determined based on the records provided by the Acquired Company, which shall be conclusive; no adjustment will be made for any reason.

SECTION 2. ELIGIBILITY

2.1 Requirements. An Eligible Employee will be eligible for benefits under Section 3 only if he:

- (a) experiences a Job Elimination; and
- (b) signs and returns a Severance Agreement within 21 business days or within such other period or by such other date specified in the "Notification."

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.

2.3 Job Elimination. The Eligible Employee's position is eliminated because of corporate restructuring, downsizing, or a reduction in force and, as a result, his employment with the Company terminates. Job elimination does not include termination by the Company for any other reason or voluntary termination. Whether or not a position is being eliminated due to corporate restructuring, downsizing, or a reduction in force is conclusively determined by the responsible manager. If an Eligible Employee's position is eliminated but he accepts another position with the Company, he will not become a Participant and will not be eligible for Benefits hereunder. For purposes of this section a Participant who is designated as a Level 6 employee will also be deemed to have experienced a job elimination if his employment is terminated for any reason other than for Cause within 18 months after a Change in Control.

2.4 Loss of Eligibility. An Eligible Employee who would otherwise be eligible under this Section 2, will not be eligible for benefits under the Plan if he rejects an offer of another position within the Company provided that the new position:

- (a) has Base Pay that is at least eighty percent (80%) of the Base Pay for the position that is being eliminated; and
- (b) does not increase Eligible Employee's one-way commute from his primary residence to his place of work by 25 miles or more.

2.5 Repayment Upon Rehire. If a Participant has received Severance Pay and subsequently becomes employed by the Company, Participant will be required to repay a pro-rata portion of the Severance Pay. The pro-rata portion to be repaid will be equal to:

$$\left(\frac{\text{Number of weeks of Severance Pay}}{\text{Number of weeks between Termination Date and rehire date}} \right) \times \text{Severance Pay}$$

Number of weeks of Severance Pay

Reemployment also includes employment by an unrelated entity that provides services to the Company through a contract with the Company.

2.6 Leave of Absence. If an employee's job is eliminated while he is on unpaid leave of absence that is not protected by federal or state law, including but not limited to the Family Medical Leave Act, he will not be eligible for benefits under this Plan. For purposes of this Section 2.6, an employee's job is considered eliminated effective on the Job End Date.

SECTION 3. BENEFITS

3.1 In General. If a Participant meets the eligibility requirements he will be eligible for Severance Pay based on the appropriate schedule set forth in Section 3.2.

3.2 Severance Pay. Except as noted in Section 3.2(d) below, Severance Pay is equal to Base Pay for the number of weeks indicated in the table in subsection (a), and the number of weeks indicated in subsection (b), if any.

(a) The number of weeks of basic Severance Pay are calculated as follows:

Senior Leader	Levels 6-8		Levels 9-13	
	Years of Service	Total Weeks	Years of Service	Total Weeks
4 weeks per year Min: 16 weeks Max: 52 weeks	< 6 mos	4.0	< 6 mos	3.0
	6-23 mos	8.0	6-23 mos	6.0
	2 yrs	10.0	2 yrs	7.5
	3	12.0	3	9.0
	4	14.0	4	10.5
	5	16.0	5	12.0
	6	18.0	6	13.5
	7	20.0	7	15.0
	8	22.0	8	16.5
	9	24.0	9	18.0
	10	26.0	10	19.5
	11	28.0	11	21.0
	12	30.0	12	22.5
	13	32.0	13	24.0
	14	34.0	14	25.5
	15	36.0	15	27.0
	16	38.0	16	28.5
	17	40.0	17	30.0
	18	42.0	18	31.5
	19	44.0	19	33.0
	20	46.0	20	34.5
	21	48.0	21 or more	36.0
22	50.0			
23 or more	52.0			

- (b) Any Participant who is required to repay a portion of Severance Pay pursuant to Section 2.5 will be entitled to additional weeks of Base Pay equal to the number of weeks of Severance Pay he was required to repay upon rehire.
- (c) Severance Pay will be reduced dollar for dollar by the amount of any pay received during a period when the Participant is on Nonworking Notice, provided that Severance Pay will not be reduced to less than one week of Severance Pay.
- (d) Notwithstanding the foregoing, a Participant who is designated as a Level 6 employee at the time of the Change in Control will be entitled to Severance Pay equal to one and a half times his annual compensation, reduced by any other payments due under this Section 3.2 if his employment is terminated for any reason other than for Cause within 18 months after the Change in Control. For purposes of this Section 3.2(d), annual compensation will include base pay at the time of the Change in Control, plus the greater of: (i) the target bonus or incentive pay for the current year; or (ii) the actual bonus or incentive pay for the preceding year.

3.3 Payment Method. Severance Pay will be paid to Participant in a lump sum payment unless the Plan Administrator determines, in its sole discretion, that periodic payments or other forms of payment may be made in lieu of the lump sum payment. State and federal taxes will be withheld from the payment as required by law.

3.4 Loss of Some or All Benefits. If a Participant has received Severance Pay and subsequently becomes employed by the Company, Participant will be required to repay a pro-rata portion of the Severance Pay pursuant to Section 2.5.

3.5 Limitation on Payments. In the event that Participant would, except for this Section 3.6, be subject to a tax pursuant to Section 4999 of the Code, or any successor provision that may be in effect, as a result of "parachute payments" (as that term is defined in Sections 280G(b)(2)(A) and 280G(d)(3)) made pursuant to the Plan, or a deduction would not be allowed to the Company for all or any part of such payments, by reason of Section 280G(a), or any successor provision that may be in effect, such payments shall be reduced, eliminated, or postponed in such amounts as are required to reduce the aggregate "present value" (as that term is defined in Section 280G(d)(4)) of such payments to one dollar less than an amount equal to three times Participant's "base amount," (as that term is defined in Sections 280G(b)(3)(A) and 280G(d)(1) and (2)) to the end that Participant is not subject to tax pursuant to such Section 4999 and no deduction is disallowed by reason of such Section 280G(a).

3.6 Death of Participant. If a Participant dies before his Job End Date, no benefits will be paid under the Plan. If a Participant dies after his Job End Date but before he has

received Severance Pay under the Plan, payment will be made to his beneficiaries or to his estate provided that his personal representative signs and returns the Severance Agreement.

SECTION 4. NOTIFICATION

4.1 General. When Participant's position is to be eliminated, Participant will be notified in writing ("Notice"). Only a notice issued by the Transition Services Group (or its successor) constitutes notice under this Plan. The notice will indicate Participant's Job End Date.

4.2 Extension and Acceleration. The Company reserves the right to extend, cancel or accelerate Participant's Job End Date in accordance with the following rules:

(a) A Participant's Job End Date may be accelerated at any time by the Company. If the Job End Date is accelerated at any time within fourteen (14) days of a Participant's Original Job End Date, the Company will pay Participant his regular salary through the Original Job End Date in addition to any Severance Pay.

(b) A Participant's Job End Date may be extended or canceled by the Company at any time, however, if the Company notifies a Participant of its intent to extend or cancel the Job End Date within fourteen (14) days of the Original Job End Date, the Participant may reject such extension or cancellation, voluntarily terminate on the Original Job End Date, and receive full Severance Pay under this Plan.

4.3 Plan Document Controls. Notices may indicate eligibility for specific benefits under this Plan, including benefits set forth in an Appendix, and an estimate of actual benefits. However, this information is provided merely as a courtesy and does not convey any right upon the Participant to receive a particular benefit nor does it mean that Participant is eligible for a particular program. The amount of any benefit and eligibility for a particular benefit are governed by this Plan document, including any appendixes thereto.

SECTION 5. ADMINISTRATION COMMITTEE

5.1 Plan Administrator. The Plan Administrator shall be the Plan Administration Committee (the "Committee"). The Administrator may delegate any of its duties, responsibilities, or authority to one or more person (by name or by title), committee, or unrelated service provider. The Plan Administrator has absolute discretion to make all decisions under this Plan, including making determinations about eligibility for and the amounts of benefits payable under this Plan and interpreting all provisions of this plan. All decisions of the Plan Administrator are final, binding and conclusive.

5.2 Powers of the Administration Committee. The Committee shall have the following powers and duties:

- (a) To direct the administration of the Plan in accordance with the provisions herein set forth;
- (b) To adopt rules of procedure (including distribution procedures) necessary for the administration of the Plan provided the rules are not inconsistent with the terms of the Plan;
- (c) To interpret the provisions of the Plan and determine all questions with respect to rights of Participants under the Plan, including but not limited to rights of eligibility of a Participant to participate in the Plan, and the value of a Participant's benefit.
- (d) To interpret and enforce the terms of the Plan and the rules it adopts;
- (e) To review and render decisions with respect to a claim for, (or denial of a claim for) a benefit under the Plan;
- (f) To furnish the Company with information which the Company may require for tax or other purposes;
- (g) To engage the service of counsel (who may, if appropriate, be counsel for the Company) and agents whom it may deem advisable to assist it with the performance of its duties;
- (h) To receive from the Company and from Participants such information as shall be necessary for the proper administration of the Plan; and
- (i) To interpret and construe the terms of the Plan in its discretion.

The Committee shall have no power to add to, subtract from, or modify any of the terms of the Plan, or to change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for a benefit under the Plan provided that the Committee may amend the Plan to comply with changes in relevant laws, to provide for more efficient administration or other changes it deems appropriate as long as the changes do not materially increase the obligation or liabilities of the Company. Nonetheless, the Committee shall have absolute discretion in the exercise of its powers in this Plan. All exercises of power by the Committee hereunder shall be final, conclusive and binding on all interested parties, unless found by a court of competent jurisdiction, in a final judgment that is no longer subject to review or appeal, to be arbitrary and capricious.

SECTION 6. ACQUISITION PROGRAMS

6.1 In General. Special provisions that apply only to certain classes of former employees of Acquired Companies shall be set forth in the appendixes to this document (the "Acquisition Programs"). The terms set forth in the appendixes shall control to the extent they

are inconsistent with the terms set forth in this Basic Program document. All other terms in this Basic Program document shall apply to the Acquisition Programs.

6.2 Expiration. Acquisition Programs are intended to provide benefits to Participants of certain Acquired Companies should their positions be eliminated within a certain time after the acquisition. Every Acquisition Program will expire on the expiration date set forth in the appendix that corresponds to such program, provided that if a Participant in an Acquisition Program is notified before the expiration date that his position is being eliminated within six (6) months of the expiration date, the acquired Participant will continue to be eligible for the Acquisition Program benefits provided that he is actually terminated within six (6) months of the expiration date.

6.3 Authority to Adopt. The Company may add Appendixes at any time by amending the Plan. In addition, Appendixes may be added by adopting and approving a binding agreement to acquire the stock or some or all of the assets of an unrelated entity. If the Company adopts and approves such an agreement, and under the terms of that agreement, the Company is obligated to provide severance benefits to employees of the acquired company under terms that are different from the terms of the Basic Program, the terms will be included in an Appendix. The Company's most senior Human Resources executive shall have the authority to prepare and execute the Appendix on behalf of the Company.

6.4 Reliance on Records. In administering the Acquisition Programs, the Plan Administrator will conclusively rely on records provided by the Acquired Company for purposes of determining eligibility and benefits.

SECTION 7. COMPANY ADMINISTRATIVE PROVISIONS

7.1 Amendment to Termination. The Plan may be amended or terminated by the Company or the Plan Administration Committee (for certain enumerated reasons) at any time when, in its judgment, such amendment or termination is necessary or desirable. No such termination or amendment shall affect the rights of any individual who is then entitled to receive Severance Pay at the time of such amendment or termination.

Severance Pay is not intended to be a vested right. The Committee reserves the right to interpret the Plan, prescribe, amend and rescind rules relating to it, determine the terms and provisions of the Severance Payments and make all other determinations it deems necessary or advisable for the administration of the Plan. The determination of the Committee on all matters regarding the Plan shall be conclusive.

Notwithstanding the foregoing, upon a Change in Control, and for a period of two years thereafter, the Company or its successor shall have no authority to amend the Plan to the extent that the amendment would interfere with change or reduce benefits that would otherwise be payable under Section 3.2 (d).

7.2 Claim Procedure.

(a) In General. If a Participant's claim for benefits is denied, the Plan Administrator will furnish written notice of denial to the Participant making the claim (the "Claimant") within sixty (60) days of the date the claim is received, unless special circumstances require an extension of time for processing the claim. This extension will not exceed sixty (60) days, and the Claimant must receive written notice stating the grounds for the extension and the length of the extension within the initial sixty (60) day review period. If the Plan Administrator does not provide written notice, the Claimant may deem the claim denied and seek review according to the appeals procedures set forth below.

(b) Denial Notice. The notice of denial to the Claimant shall state:

- (i) the specific reasons for the denial;
- (ii) specific references to pertinent provisions of the Plan upon which the denial was based;
- (iii) a description of any additional material or information needed for the Claimant to perfect his or her claim and an explanation of why the material or information is needed; and
- (iv) a statement that the Claimant may request a review upon written application to the Plan Administrator, review pertinent Plan documents, and submit issues and comments in writing, and that any appeal that the Claimant wishes to make of the adverse determination must be in writing to the Plan Administrator within ninety (90) days after the Claimant receives notice of denial of benefits.

The notice of denial of benefits shall identify the name and address of the Administrator to which the Claimant may forward an appeal. The notice may state that failure to appeal the action to the Plan Administrator in writing within the ninety (90) day period will render the determination final, binding and conclusive.

7.2 Appeal Procedure. If the Claimant appeals to the Administrator, the Claimant or his or her authorized representative may submit in writing whatever issues and comments he or she believes to be pertinent to the appeal. The Administrator shall reexamine all facts related to the appeal and make a final determination about whether the denial of benefits is justified under the circumstances. The Administrator shall advise the Claimant in writing of:

- (a) its decision on appeal;
- (b) The specific reasons for the decision; and
- (c) The specific provisions of the Plan upon which the decision is based.

Notice of the Administrator's decision shall be given within sixty (60) days of the Claimant's written request for review, unless additional time is required due to special circumstances. In no event shall the Administrator render a decision on an appeal later than one hundred twenty (120) days after receiving a request for a review.

SECTION 8. MISCELLANEOUS PROVISIONS

8.1 Severance Agreement. Participants will receive the Severance Agreement after they receive Notification of Job Elimination. The Severance Agreement will not be valid unless it is signed and returned after the Termination Date but within 21 business days or other time period prescribed by the Administrator. The Severance Agreement will be generally effective for any claims against the Company through the Termination Date, but will not cover any claims or appeal processes set forth in any ERISA plans sponsored by the Company. Failure to sign and return the Severance Agreement within twenty one (21) business days will result in Participant being ineligible for Severance Pay under the Plan.

8.2 Divestiture. If a Participant is offered a position with another company that has purchased some or all of the assets of the Company or has purchased the stock of the Company or one of its affiliates or subsidiaries, the Participant will not be entitled to severance benefits under the Plan, provided that the job offered meets the requirements of Section 2.4(a) and 2.4(b).

8.3 Outsourcing. If a Participant is offered a position with an entity unrelated to the Company in connection with a decision to outsource particular services, Participant will not be eligible for severance under this Plan.

8.4 Governing Law. To the extent not preempted by ERISA, the terms of the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Washington, including all matters of construction, validity and performance.

8.5 Miscellaneous Provisions.

(a) Anti-Alienation. Severance Pay and benefits under the Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge prior to actual receipt thereof by a Participant; and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge prior to such receipt shall be void; and the Company shall not be liable in any manner for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any Severance Pay or benefits under the Plan.

(b) Employment at Will. Nothing contained herein shall confer upon any Participant the right to be retained in the service of the Company or an affiliate nor limit the right of the Company or an affiliate to discharge or otherwise deal with any Participant with regard to the existence of the Plan.

(c) Unfunded. The Plan shall at all times be entirely unfunded and no provision shall at any time be made with respect to segregating assets of the Company or

an affiliate for payment of any Severance Pay or Severance Benefits hereunder. No Participant or any other person shall have any interest in any particular assets of the Company or an affiliate by reason of the right to receive Severance Pay or Severance Benefits under the Plan and any such Participant or any other person shall have only the rights of a general unsecured creditor of the Company or an affiliate with respect to any rights under the Plan.

(d) Notwithstanding any provision of this Plan to the contrary, if, at the time of Participant'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 Participant pursuant to this Plan would constitute deferred compensation subject to Section 409A, no such payment or benefit will be provided under this Plan until the earlier of (a) the date that is six (6) months following Participant's termination of employment with Washington Mutual, or (b) the Participant's death. The provisions of this Section 8.5(d) shall only apply to the extent required to avoid Participant's incurrants 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 Plan would cause Participant 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 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.

Pursuant to the authority delegated to me by the Plan Administration Committee, this Plan is hereby adopted effective as of the date specified above:



Daryl D. David
Executive Vice President
Human Resources
Washington Mutual, Inc.

WaMu Severance
Summary Plan Description (SPD)
Effective as of January 1, 2008

04/29/2008 10:53 AM

#159723 v3

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").

This document is a summary plan description. It summarizes the basic terms of the Plan that apply to all eligible participants. Special terms that may apply to former employees of acquired companies are described in the appendices to this summary. Although every effort has been made to provide accurate information, the official plan documents will govern if there are any inconsistencies. Washington Mutual reserves the right to amend or terminate the Plan at any time.

Eligibility

You are eligible for the Plan only if you meet *all* of the following requirements:

1. **Eligible Employee.** You are a regular employee who is scheduled to work at least 20 hours per week.
2. **Job Elimination.** Your job is eliminated and as a result your employment with Washington Mutual ends.
3. **Severance Agreement.** You sign and return your Severance Agreement to Transition Services by the deadline specified in your Severance Agreement.

Each of these requirements is discussed in more detail below.

Eligible Employee

You must remain an Employee. If you have been notified that your job is being eliminated, you will not be eligible for Severance Pay unless you remain employed by Washington Mutual through your Job End Date. In other words, if you voluntarily terminate your employment, or

Washington Mutual terminates you for any other reason (such as poor performance) you will not be entitled to Severance Pay under this Plan.

If You Accept Another Job. If you accept any other job at Washington Mutual, you will not be eligible for Severance Pay.

If We Offer You A Job. If we extend a job offer to you for another job, but you reject the offer, you will only be eligible for Severance Pay if the new job we offer you:

- Pays less than 80% of what your current job pays in terms of base pay; or
- Increases your one-way commute (from your primary residence to your worksite) by 25 miles or more.

The same rule applies if you receive a job offer that meets the requirements listed above from a "successor employer." A Successor Employer is one who has purchased all or a portion of Washington Mutual or an affiliate, and hires you as part of the purchase agreement. It also includes a contingency staffing company or any other company that contracts with Washington Mutual to do the work you were doing.

Ineligible Workers. You are *not* eligible for Severance Pay if you are an independent contractor or a worker hired through a contract with any other unrelated entity, including but not limited to contingent staffing companies, professional employer organizations, temporary agencies or other similar entities. Employees who are hired for a fixed term as defined in Washington Mutual Human Resources policies and employees designated as fully commissioned employees in the Human Resources Information Systems are not eligible for Severance Pay even if they receive a non-recoverable draw, minimum incentive, guaranteed commission or similar payments.

Leave of Absence. If your job is eliminated while you are on an unpaid leave of absence that is not protected by federal or state law, including but not limited to the Family Medical Leave Act (FMLA) you will not be eligible for Severance

Pay. Severance eligibility under this provision will be determined as of your Job End Date.

If you are on a job-protected leave or are receiving pay (vacation, incidental illness, STD benefits) when your Job End Date occurs, you will be eligible for Severance Pay under the Plan, provided you meet all of the other requirements.

You are not eligible to receive benefits under this Plan if Washington Mutual, or any entity acquired by Washington Mutual, is paying benefits to you under any severance plan, arrangement or agreement, is obligated to make any such payments, or has made such payments within the last two years.

Job Elimination

Job End Date. Your Job End Date is the date specified in your Job Elimination Overview issued by Transition Services. Typically, this will be your last day at work, but at management's discretion you may be released from work earlier.

Washington Mutual reserves the right to extend, accelerate or cancel your Job End Date at any time, subject to the following limitations:

1. If you are notified of an *acceleration* to your Job End Date within fourteen (14) days of that date, Washington Mutual will pay you through your previously scheduled Job End Date and you will not forfeit any rights to benefits under the Plan.
2. If you are notified of an *extension* to or *cancellation* of your Job End Date within fourteen (14) days of that date, you may elect to voluntarily terminate on your previously communicated Job End Date, and you will not forfeit any rights to Severance Pay under this Plan.

Severance Agreement

You must sign and return your Severance Agreement (the "Agreement") in a timely manner to be eligible for Severance Pay, which Washington Mutual is not otherwise obligated to

provide. Washington Mutual reserves the right to amend the Agreement from time to time.

The Agreement will include a release of claims against the company through your Job End Date, but will not preclude you from pursuing claims for benefits under any of the other Washington Mutual ERISA-governed benefit plans, such as WaMu Pension, WaMu Savings, and the Flexible Benefits Plan.

You will be provided with a period of time following your Job End Date to review and then sign and return your Severance Agreement. Please read your Severance Agreement for expiration information.

Returning Your Signed Agreement

Your Agreement must be signed and returned after your termination date but before the expiration date. *Your Agreement will not be valid unless it is signed and returned after the Job End Date.*

If you fail to return your signed Agreement within the time period specified in your Agreement, you are not eligible for Severance Pay. Your signed Agreement must be returned to:

Washington Mutual
Transition Services
1301 2nd Ave.
Mail Stop WMC0603
Seattle, WA 98101

In the Event of Death

In the event of your death before your Job End Date, your beneficiaries are not eligible for any severance payments.

In the event of your death after your Job End Date, regardless of whether you have signed and returned your Severance Agreement, your estate will be entitled to Severance Pay as long as all of the eligibility requirements have been met. If you have not yet signed and returned your Severance Agreement, your executor or personal representative may do so.

Benefits

If you meet the eligibility requirements for Severance, we will provide you with Severance Pay. Severance Pay is designed to provide you with a financial bridge during a period of unemployment that is the result of a job elimination at Washington Mutual.

Estimate Your Severance Pay

Transition Services will calculate the amount of Severance Pay, but you can estimate your Severance Pay using your job level, your base pay, your length of service, and the amount, if any, of pay in lieu of notice.

A. Determine length of service and weeks of severance

"Years of Service" are calculated by using your hire date and termination date. For purposes of this calculation, hire date is your latest hire date and is calculated in consecutive, whole years. In the case of an acquisition, Years of Service will be determined based on the records provided by the acquired company, which shall be conclusive; no adjustment will be made for any reason.

Use the following Severance Pay Schedule to determine your weeks of Severance Pay.

Severance Pay Schedule

Severance Pay schedule for jobs in Levels 6-13, and all non-leveled positions:

Length of Service	Levels 6-9	Levels 9-13, and non-leveled positions
Minimum Severance (less than 6 months of service)	4 weeks	3 weeks
Basic Severance (≥6 months of service, but <2 years of service)	8 weeks	6 weeks
Additional Benefit (at 2 years of service and each year of service thereafter)	2 weeks	1.5 weeks
Maximum	52 weeks	36 weeks

Severance Pay schedule for Senior Leaders:

Senior Leaders
4 weeks per year
Minimum: 16 weeks
Maximum: 52 weeks

B. Calculate your weekly base pay

Multiply your hourly rate of pay by 40 hours. If you are not a full-time employee, determine the average weekly hours you worked during the previous calendar quarter and multiply that number by your hourly rate.

Base pay is pay that is fixed, meaning it is not dependent on your job performance. The Plan considers the amount of base pay cited in your employment agreement, job offer letter, or confirmation letter (and any subsequent adjustments prior to your termination date).

Base pay does not include bonuses, incentives, commission, overtime pay, or any other form of special compensation, nor does it include a temporary compensation agreement or "ramp-up" pay typically provided to new hires in a commission-based position.

C. Multiply your severance weeks by your weekly base pay to determine your Severance Pay

Severance is paid in a lump sum (unless the Plan Administrator, in its sole discretion, decides to pay it in installments) as soon as administratively feasible following receipt of your signed Severance Agreement.

When estimating your Severance Pay, consider the taxes that will be withheld, as well as any applicable deductions. Withholding on Severance Pay is at the supplemental federal income tax rate, in addition to any applicable state or local taxes. If you have questions about taxes please consult a tax professional.

D. Reduce the amount calculated in Section C above by any pay you received during a period of time after you were notified of your Job Elimination when you were not required to be at work.

Being paid when you are not required to work is called pay in lieu of notice or "non-working notice." Whether or not this non-working notice is required by the Worker Assistance Relocation Notice Act ("WARN"), any pay received during the non-working period reduces the amount of your Severance Pay on a dollar for dollar basis, provided that your Severance Pay will never be reduced to less than one week of Severance Pay.

Level 6 Change in Control Benefit.

You will be entitled to receive a lump sum payment of 1.5 times your Annual Compensation if you are a Level 6 employee, there is a Change in Control, and you are terminated for any reason other than for Cause within 18 months after the Change in Control.

For purposes of this section, the following definitions apply:

"Annual Compensation" means base pay at the time of the Change in Control, plus the greater of your target bonus or incentive pay for the current year or your actual bonus or incentive pay for the preceding year.

"Cause" is defined as follows (i) recurring violations of our substance abuse policy; (ii) conviction of a felony or certain misdemeanors involving moral turpitude; (iii) entering into a pretrial diversion program in connection with the prosecution for certain crimes; (iv) dishonesty, fraud, destruction or theft of Company property; (v) physical attack on another Company employee; (vi) willful malfeasance or gross negligence in performance; or (vii) or misconduct that causes a material injury to the Company.

"Change in Control" is generally defined as an acquisition of the Company by merger, consolidation, asset acquisition or stock purchase.

If you are entitled to this L6 Change in Control benefit, then you are not eligible for Severance Pay.

Other Terms

Repayment Upon Rehire

If you receive Severance Pay under this Plan and you are subsequently rehired by the Company, you will be required to repay all or part of the Severance Pay you received (in full before you start working). You will be permitted to keep the portion of your Severance Pay that covers the weeks between your termination date and your rehire date (the "unemployment period"). You will be required to repay the rest of your Severance Pay.

Example. If your employment with Washington Mutual terminated on December 31, 2007 and you received ten weeks of Severance Pay, but you were rehired on January 29, 2008, you would be required to pay back six weeks of Severance Pay (ten weeks of Severance Pay minus the four week unemployment period). You would keep the four weeks of Severance Pay.

If You Are Laid Off Again

If you repay your Severance Pay upon rehire, and are subsequently laid off, we will add the amount you repaid to the Severance Pay to which you become entitled. Please note that your Severance Pay will be based on your most recent hire date.

What Does "Rehire" Mean?

Rehire is defined as returning to work on the payroll of Washington Mutual, Inc. or any of its subsidiaries or affiliates in a regular position. Rehire also includes being hired by an unrelated company (e.g., a contingency staffing agency or other such company) to perform services for Washington Mutual, unless, in its absolute discretion, the Plan Administrator determines that the services to be performed are of such a limited nature that repayment should not be required.

Plan Administration

This Severance Plan is administered by the Plan Administration Committee (the "Administrator"). The Administrator may delegate any of its duties or authorities to any person or entity within the company. The Administrator has delegated to the Transition Services Group, the authority to make determinations under the Plan and interpret provisions of the Plan, and has delegated the authority to make determinations on appeal to the appeals committee. The Administrator has absolute discretion to make all decisions under this Plan, including making determinations about eligibility for and the amounts of benefits payable under this program and interpreting all provisions of this Plan. All decisions of the Administrator are final, binding and conclusive.

Amendments

The Company reserves the right to amend or terminate the Severance Plan at any time. The Severance Plan can only be amended in writing by the Board of Directors or its delegate; the Plan cannot be amended orally.

Claims/Appeals

Claims

You may make a claim for benefits by writing to Washington Mutual, Transition Services, 1301 2nd Ave., WMC0603, Seattle, WA 98101. Your claim must specify the name of the Plan, the nature of your claim, and the provisions of the Plan upon which your claim is based. In addition, you must include any documentation that supports your claim.

If your claim is denied, the Administrator will furnish written notice of denial within 60 days of the date the claim is received, unless special circumstances require an extension of time for processing the claim. If an extension is required, you will receive written notice, and in no case will the extension exceed an additional 60 days. If you do not receive a written response within the extended deadline, you may treat the claim as denied and seek review according to the appeals procedures set forth below.

The notice of denial to you shall state:

- a. the specific reasons for the denial;
- b. specific references to pertinent provisions of the Plan on which the denial was based;
- c. a description of any additional material or information needed for you to perfect your claim and an explanation of why the material or information is needed; and
- d. a statement that you may request a review upon written application to the Administrator, review pertinent Plan documents, and submit issues and comments in writing, and that any appeal that you wish to make of the adverse determination must be in writing to the Administrator within 60 days after you receive notice of denial of benefits.

The notice of denial of benefits shall identify the name and address of the Administrator to which you may appeal. Appeals must be in writing and must be filed within 60 days of notice of denial of the claim. Failure to appeal in writing within

the 60 day period will render the determination final, binding and conclusive.

Appeals

If you appeal to the Administrator, you or your authorized representative may submit in writing whatever issues and comments you believe to be pertinent. The Administrator shall reexamine all facts related to the appeal and make a final determination about whether the denial of benefits is justified under the circumstances. The Administrator shall advise you in writing of:

- a. its decision on appeal;
- b. the specific reasons for the decision; and
- c. the specific provisions of the Plan on which the decision is based.

Notice of the Administrator's decision shall be given within 60 days of your written request for review, unless additional time is required due to special circumstances. In no event shall the Administrator render a decision on an appeal later than 120 days after receiving a request for a review.

All Severance Plan appeals will proceed through the Severance Plan Administrator. Forward all requests to the Washington Mutual, Transition Services, 1301 2nd Ave., Mail Stop WMC 0603, Seattle, WA 98101.

Resources

Your Employee Relations Consultant is generally familiar with the terms of the Plan and may be able to answer some of your questions. But, remember that only the Administrator can interpret the provisions of the Plan.

If you do not know the name of your assigned Employee Relations Consultant, speak to your Manager, or contact the ESC at 1-866-492-6847.

Plan Information

Sponsor and Administration:

Washington Mutual, Inc.
1301 2nd Ave.
Mail Stop WMC0603
Seattle, WA 98101

EIN: 91-1653725

Name of Plan: The WaMu Severance Plan

Type of Plan: Welfare benefit plan (severance)

Plan Number: 502

Agent for service of process:

General Counsel
Washington Mutual, Inc.
1301 2nd Avenue
Mail Stop WMC3501
Seattle, WA 98101

Funding: Funded from the general assets of the Sponsor

Plan Year: January 1 to December 31

ERISA Rights

As a participant in the Plan you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all plan participants shall be entitled to:

Receive information about your plan and benefits. Examine, without charge, at the Plan Administrator's office and at other specified locations, such as worksites, all documents governing the Plan, including insurance contracts, and a copy of the latest annual report (Form 5500 Series) filed by the plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration.

Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan, including insurance contracts, and copies of the latest annual report (Form 5500 Series) and updated summary plan description. The Administrator may make a reasonable charge for the copies.

Receive a summary of the Plan's annual financial report. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

Prudent Actions by Plan Fiduciaries

In addition to creating rights for Plan participants ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other plan participants and beneficiaries. No one, including your employer or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a (pension, welfare) benefit or exercising your rights under ERISA.

Enforce Your Rights

If your claim for a welfare benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110.00 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or Federal court. If it should happen that Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

Assistance with Your Questions

If you have any questions about your Plan, you should contact the Plan Administrator. If you

have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory, or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

EXHIBIT C

DRAFT

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

UNITED STATES BANKRUPTCY COURT		District of Delaware	PROOF OF CLAIM
Name of Debtor: WASHINGTON MUTUAL, INC.		Case Number: 08-12229 (MFW)	<p style="text-align: center;">COURT USE ONLY</p> <input checked="" type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: <u>1092</u> <i>(If known)</i> Filed on: _____
NOTE: <i>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.</i>			
Name of Creditor (the person or other entity to whom the debtor owes money or property): Patricia Schulte			
Name and address where notices should be sent: Patricia Schulte c/o Michael Busenkell, Esq. 913 N. Market Street, 10th Floor Wilmington, DE 19801		Telephone number: (302) 425-5812 email: mbusenell@qsbbllaw.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.
Name and address where payment should be sent (if different from above): Telephone number: _____ email: _____			
1. Amount of Claim as of Date Case Filed: \$ <u>862,471.77</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>CIC Agreement/SERAP/WAMU Severance Pla</u> (See instruction #2)			
3. Last four digits of any number by which creditor identifies debtor: _____		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.		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____	
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____		Basis for perfection: _____	
Value of Property: \$ _____		Amount of Secured Claim: \$ _____	
Annual Interest Rate _____% <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount Unsecured: \$ _____	
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 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 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"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).	
		<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).	
		Amount entitled to priority: \$ _____	
*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)

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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: Michael Busenkell, Esq.
Title: Attorney for Creditor
Company: Gellert Scali Busenkell & Brown, LLC
Address and telephone number (if different from notice address above): _____

(Signature)

(Date)

Telephone number: (302) 425-5812 email: [mbusenkel @gsbblaw.com](mailto:mbusenkell@gsbblaw.com)

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	INFORMATION
<p>Debtor A debtor is the person, corporation, or other entity that has filed a bankruptcy case.</p> <p>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).</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>A claim also may be secured if the creditor owes the debtor money (has a right to setoff).</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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(c), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 <i>et seq.</i>), and any applicable orders of the bankruptcy court.</p>

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

In re:)	Chapter 11
)	
Washington Mutual, Inc., <u>et al.</u> ,)	Case No. 08-12229 (MFW)
)	
Debtors.)	(Jointly Administered)
)	
)	RE: D.I. _____
)	

**ORDER GRANTING MOTION OF PATRICIA SCHULTE FOR LEAVE TO AMEND
HER PROOF OF CLAIM TO ASSERT AN ALTERNATIVE THEORY OF RECOVERY**

Upon the Motion Of Patricia Schulte For Leave To Amend Her Proof Of Claim To Assert An Alternative Theory Of Recovery (the “Motion”), and it appearing that due, adequate and sufficient notice of the Motion having been given; and it appearing that no further notice need be given; and after due deliberation and sufficient cause appearing therefore; it is hereby

1. Ordered, that the Motion is hereby granted; and it is further
2. Ordered, that the amended claim may be filed within fifteen (15) days of the entry of the date of this Order; and it is further
3. Ordered that the Court retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Date: _____
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

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

In re:) Chapter 11
)
Washington Mutual, Inc., et al.,) Case No. 08-12229 (MFW)
)
Debtors.) (Jointly Administered)
)
_____)

CERTIFICATE OF SERVICE

I, Michael Busenkell, Esq., hereby certify that on February 28, 2013, a true and correct copy of the *Motion of Patricia Schulte for Leave to Amend Her Proof of Claim to Assert an Alternative Theory of Recovery* was caused to be served upon the parties listed on the attached service list via U.S. First Class Mail, postage pre-paid.

Date: February 28, 2013

GELLERT SCALI BUSENKELL &
BROWN, LLC

/s/ Michael Busenkell
Michael Busenkell (DE 3933)

U.S. Trustee
United States Trustee
844 King Street, Room 2207
Lockbox #35
Wilmington, DE 19899-0035

Amanda R. Steele
Julie A. Finocchiaro
Michael Joseph Merchant
Paul Noble Heath
Travis A. McRoberts
Richards, Layton and Finger
920 N. King Street
Wilmington, DE 19801

Amy B. Wolper
Weil, Gotshal & Manges
767 Fifth Avenue
New York, NY 10153

Christopher L. Boyd
Patrick M. Mott
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036

Evelyn J. Meltzer
Pepper Hamilton LLP
Hercules Plaza
Suite 5100, 1313 N. Market Street
Wilmington, DE 19899

Brian Rothschild
Akin, Gump, Strauss, Hauer & Feld LLP
2029 Century Park East, Ste. 2400
Los Angeles, CA 90067-3010

Christopher W. Carty
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036