

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	(Jointly Administered)
	:	Re: Docket Nos. 11182 & 11183
	:	Hearing Date: April 23, 2013 at 2:00 p.m. (ET)
-----X	:	Response Deadline: April 16, 2013 at 4:00 p.m. (ET)

**WMI LIQUIDATING TRUST’S OMNIBUS OBJECTION
TO CERTAIN EMPLOYEE CLAIMANTS’ MOTIONS TO AMEND**

WMI Liquidating Trust (“WMILT”), as successor in interest to Washington Mutual, Inc. (“WMI”) and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the “Debtors”), files this objection (the “Objection”) to the *Motion of Henry J. Berens for Order Granting Leave To File Amendment to Proof of Claim No. 2129 or, in the Alternative, Allowing Claimant To Assert Alternate Argument Regarding Claim Based on Wamu Severance Plan*, dated March 29, 2013 [D.I. 11182] (the “Berens Motion”), filed by Henry J. Berens (“Berens”), and the *Motion of Michael R. Zarro for Order Granting Leave To File Amendment to Proof of Claim No. 1743 or, in the Alternative, Allowing Claimant To Assert Alternate Argument Regarding Claim Based on Wamu Severance Plan*, dated March 29, 2013 [D.I. 11183] (the “Zarro Motion,” and, together with the Berens Motion, the “Motions”), filed by Michael R. Zarro (“Zarro,” and together with Berens, the “Claimants”), and, in support of the Objection, respectfully represents as follows:

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The principal offices of WMILT, as defined herein, are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.



PRELIMINARY STATEMENT

1. The Motions, filed almost four years after the Bar Date (as defined below), more than one year after confirmation of the Plan (as defined below), and more than five months into discovery in the Employee Claims Litigation (as defined below) should be denied because (i) the Motions assert new claims under the guise of an amendment; and (ii) the Claimants fail to satisfy the excusable neglect standard in *Pioneer Investment Services Co. v. Brunswick Associates*, 507 U.S. 380 (1993). Alternatively, were the Court to find that the relief requested in the Motions somehow relates-back to the Claimants' Original Claims (as defined below), and, therefore, assert amendments and not new claims, the Motions should still be denied because the balance of equities weighs in WMILT's favor and against permitting the amendments.

JURISDICTION AND VENUE

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

BACKGROUND

3. On September 26, 2008 (the "Commencement Date"), each of the Debtors commenced with the Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code.

4. On December 12, 2011, the Debtors filed their *Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code* [D.I. 9178] (as modified, the "Plan").² By order [D.I. 9759], dated February 23, 2012 (the "Confirmation Order"), the Court confirmed the Plan and, upon satisfaction or waiver of the

² Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed thereto in the Plan.

conditions described in the Plan, the transactions contemplated by the Plan were substantially consummated on March 19, 2012.

5. Pursuant to the Confirmation Order, the Court provided that:

As of the commencement of the Confirmation Hearing, a proof of Claim may not be filed or amended without the authority of the Court. Notwithstanding that the Court may permit the filing or amendment of such a proof of Claim, the Debtors are not required to reserve Liquidating Trust Assets to pay or otherwise satisfy any such Claims.

Confirmation Order ¶ 45.

The Bar Date

6. By order, dated January 30, 2009 (the “Bar Date Order”), the Court established March 31, 2009 (the “Bar Date”) as the deadline for filing proofs of claim against the Debtors in these chapter 11 cases. Pursuant to the Bar Date Order, each creditor, subject to certain limited exceptions, was required to file a proof of claim on or before the Bar Date.

7. In accordance with the Bar Date Order, Kurtzman Carson Consultants, LLC (“KCC”), the Debtors’ court-appointed claims and noticing agent, mailed notices of the Bar Date [D.I. 0875 and 0926] and proof of claim forms to, among others, all of the Debtors’ creditors and other known holders of claims as of the Commencement Date. Notice of the Bar Date also was published once in *The New York Times (National Edition)* [D.I. 0848], *The Wall Street Journal* [D.I. 0846], *The Seattle Times*, and *The Seattle Post-Intelligencer* [D.I. 0847].

Zarro’s Claim

8. On March 17, 2009, Zarro filed proof of claim number 1743 (the “Zarro Original Claim”), alleging a total of \$224,000.00 in payments owed pursuant to a WMB Retention Bonus Agreement (“WMB RBA”). A copy of the Zarro Original Claim is annexed hereto as **Exhibit 1**.

Berens's Claim

9. On March 24, 2009, Berens filed proof of claim number 2129 (the "Berens Original Claim," and, together with the Zarro Original Claim, the "Original Claims"), alleging a total of \$337,776.37 in payments owed pursuant to (i) the WMI Supplemental Executive Retirement Accumulation Plan (the "SERAP"); and (ii) a WMB RBA. A copy of the Berens Original Claim is annexed hereto as **Exhibit 2**.

The Omnibus Objections and Related Orders

10. On June 26, 2009, the Debtors filed the *Debtors' Fifth Omnibus (Substantive) Objection to Claims* [D.I. 1233] (the "Fifth Omnibus Objection") and the *Debtors' Sixth Omnibus (Substantive) Objection to Claims* [D.I. 1234] (the "Sixth Omnibus Objection"), both of which objected to certain employee claims, among others, on the basis that the claims were wrongly filed against WMI, which was not a party to the underlying agreements. WMILT objected to the Zarro Original Claim in the Sixth Omnibus Objection.

11. On August 15, 2012, WMILT filed (i) *WMI Liquidating Trust's Seventy-Ninth Omnibus (Substantive) Objection to Change in Control Claims* [D.I. 10504] (the "Seventy-Ninth Omnibus Objection"), which objected to certain employee claims on the basis that, among other things, WMI was not a party to the underlying agreements and no "Change in Control," as defined in the applicable agreements, occurred, and (ii) additional objections to certain other employee claims, including *WMI Liquidating Trust's Eightieth Omnibus (Substantive) Objection to Claims* [D.I. 10505] (the "Eightieth Omnibus Objection"), *WMI Liquidating Trust's Eighty-First Omnibus (Substantive) Objection to Claims* [D.I. 10506] (the "Eighty-First Omnibus Objection"), and *WMI Liquidating Trust's Eighty-Second Omnibus (Substantive) Objections to*

Claims [D.I. 10507] (the “Eighty-Second Omnibus Objection”). WMILT objected to the Berens Original Claim in the Seventy-Ninth Omnibus Objection.

12. On September 17, 2012, WMILT filed *WMI Liquidating Trust’s Eighty-Fourth Omnibus (Substantive) Objection to, Among Others, Change in Control Claims* [D.I. 10677], *WMI Liquidating Trust’s Eighty-Fifth Omnibus (Substantive) Objection to Change in Control Claims* [D.I. 10678], *WMI Liquidating Trust’s Eighty-Eighth Omnibus (Substantive) Objection to Disputed Equity Interests* [D.I. 10681], and the *Objection of WMI Liquidating Trust to Proof of Claim Filed by Claimant Medina & Thompson (Claim No. 1218)* [D.I. 10676] (collectively, the “September Omnibus Objections,” and, together with the Fifth, Sixth, Seventy-Ninth, Eightieth, and Eighty-First Omnibus Objections, the “Omnibus Objections”).

13. Following the filing of the Omnibus Objections, certain claimants filed responses to such objections (the “Responding Claimants”).

14. On May 16, 2012, the Court entered the *Third Order Granting Debtors’ Fifth Omnibus (Substantive) Objection to Claims* [D.I. 10179, as corrected by D.I. 10225] and the *Fourth Order Granting Debtors’ Sixth Omnibus (Substantive) Objection to Claims* [D.I. 10181, as corrected by, D.I. 10226] (the “May Order”), disallowing the claims of non-responding employee claimants on the Fifth and Sixth Omnibus Objections, including the Zarro Original Claim.

15. On September 19, 2012, the Court entered orders granting the Seventy-Ninth Omnibus Objection, Eightieth Omnibus Objection, Eighty-First Omnibus Objection, and Eighty-Second Omnibus Objection with respect to the non-responding employee claimants. *See* D.I. 10689, 10690, 10691, and 10692.

16. On October 15, 2012, the Court entered the *Agreed Order Establishing Procedures and Deadlines Concerning Hearing on Employee Claims and Discovery in Connection Therewith* (the “October Scheduling Order”) [D.I. 10777], which provided for, among other things, the consolidation of the litigation with respect to the Omnibus Objections (the “Employee Claims Hearing” or “Employee Claims Litigation”), a schedule of deadlines related to the Employee Claims Litigation, discovery protocols to be followed by the parties, and defined the more than eighty (80) remaining employee claimants (the “Remaining Claimants”).

17. Thereafter, WMILT and certain of the Remaining Claimants began the discovery process and quickly realized that, based upon the discovery propounded, additional time would be required to complete such process and prepare for the Employee Claims Hearing. Consequently, on January 7, 2013, the Court entered the *Agreed Order Amending Scheduling Orders with Respect to Employee Claims Hearing and Adversary Proceedings* (the “Amended Scheduling Order”) [D.I. 10975], pursuant to which the Court, among other things, amended the deadlines set forth in the October Scheduling Order and established June 3, 2013 as the hearing date to consider the change of control issues raised by the Omnibus Objections.

18. On January 24, 2013, Zarro filed the *Motion of Michael R. Zarro to Reinstate Proof of Claim 1743 and Vacate Order Disallowing Claim and for Attorneys’ Fees and Costs* [D.I. 10995] (the “Motion to Reinstate”), requesting that the Court reconsider and vacate the May Order with respect to the Zarro Original Claim.

19. On February 14, 2013, WMILT filed *WMI Liquidating Trust’s Objection to Motion of Michael A. Zarro to Reinstate Proof of Claim 1743 and Vacate Order Disallowing Claim and for Attorneys’ Fees and Costs* [D.I. 11029].

20. After a hearing, by order, dated February 21, 2013 [D.I. 11036], the Court granted in part and denied in part the Motion to Reinstate. In particular, the Court reinstated the Zarro Original Claim, vacated, in part, the May Order disallowing the Zarro Original Claim, and denied Zarro's request for attorneys' fees and costs.

21. In early February, 2013, eighteen (18) Responding Claimants filed motions to amend their proofs of claim [D.I. 11009, 11010, 11011, 11012, 11013, 11014, 11015, 11016, 11017, 11018, 11019, 11020, and 11026]. All of the motions to amend sought alternate claims pursuant to either the WaMu Severance Plan or the Executive Officer Severance Plan (the "Alternate Claims"). However, one of the claimants, Chandan Sharma ("Sharma"), also sought to increase his original proof of claim amount of \$581,627.55 by \$74,737.00 pursuant to a new claim under his Retention Bonus Agreement. *See* D.I. 11011.

22. On February 26, 2013, WMILT filed (i) a limited objection to the motions to amend insofar as they requested leave of the Court to assert the Alternate Claims (the "Limited Objection"), and (ii) an objection to Sharma's motion to amend insofar as Sharma sought to add a new claim under his Retention Bonus Agreement (the "Sharma Objection"). *See* D.I. 11039; 11040. In the Limited Objection, WMILT did not object to the motions to amend to assert the Alternate Claims. However, WMILT requested sixty (60) days to file renewed omnibus objections based on the amendments, permission to bring additional adversary proceedings it may have against the claims and, to the extent necessary, to propound additional discovery related to the Alternate Claims should the Court grant the motions. In the Sharma Objection, WMILT similarly did not object to Sharma's Alternate Claim, subject to the aforementioned requests should the Court grant Sharma's motion. However, WMILT objected to Sharma's new claim pursuant to his Retention Bonus Agreement on the grounds that

(i) Sharma was asserting a new claim rather than an amendment; (ii) Sharma did not satisfy the excusable neglect standard and (iii) even if the Court were to determine that Sharma's new claim was indeed an amendment, the equities weighed in favor of WMILT in denying the amendment.

23. A hearing was held on March 7, 2013 to consider the various motions to amend. The Court granted the motions including Sharma's [D.I. 11136, 11063, 11062, and 11061]. With regard to Sharma's motion, the Court explained:

I am going to allow the amendment. I think that it does relate back to the original proof of claim because it is a claim based on the employment relationship. I also note that the agreement, retention agreement provided for payments, including a payment in August 09 that was after the deadline for filing proofs of claim and I don't know whether that effected Mr. Sharma's thinking as far as whether or not he had to file the claim. But I think since he was not represented by counsel at the time that he filed the proof of claim I do find that excusable neglect and failing to include that portion of the claim. But I think that the claim does clearly relate to the employment relationship and the terms of employment and therefore is covered by the terms of the original claim.

Hr'g Tr. 30:2-16, March 7, 2013.

24. On February 19, 2013, WMILT filed *WMI Liquidating Trust's Motion for Leave to Amend the Fifth, Sixth, Seventy-Ninth, Eightieth, Eighty-First, Eighty-Second, Eighty-Fourth, Eighty-Fifth, and Eighty-Eighth Omnibus Objections to Claims* [D.I. 11032] (the "Motion to Amend"). The Motion to Amend was originally scheduled to be heard on March 25, 2013.

25. On March 25, 2013, the Court held a hearing (the "March 25 Hearing") where WMILT and certain of the claimants, through their counsel, announced the parties' desire to (i) continue WMILT's Motion to Amend, without prejudice, to June 3, 2013, and (ii) suspend the current Scheduling Orders, without prejudice, with respect to all actions, obligations, deadlines, and dates set forth therein while settlement discussions (including mediation) are ongoing, subject to certain limited exceptions.

26. On March 29, 2013, and at the suggestion of counsel to certain Remaining Claimants, WMILT filed the *Motion for an Order Appointing a Mediator in Employee Claim Matters* [D.I. 11185], requesting the entry of an order appointing a mediator to the extent WMILT and the Claimant could not resolve the claims on or before April 15, 2013. In connection therewith, WMILT reported that it had commenced settlement discussions with all of the Remaining Claimants, and had resolved or was near resolution of claims representing over twenty percent (20%) of the Remaining Claimants and over \$60 million of the \$133 million reserved in connection therewith. As of the date hereof, WMILT has resolved the claims of approximately forty-five percent (45%) of the Remaining Claimants and over \$80 million of the \$123 million in Disputed Claims amount.

27. On March 29, 2013, Berens and Zarro filed the Motions.

THE MOTIONS

28. The Claimants seek leave of the Court to amend the Original Claims to add a new claim pursuant to the Claimants' respective WMB "change in control" employment agreement ("WMB CIC Agreement" or "New CIC Claim"). Additionally, should the Court grant the former amendment, the Claimants also seek leave of the Court to further amend their amended claims to assert an alternate claim to the New CIC Claim under the Wamu Severance Plan³ in the event the Court determines that a "change in control" did not occur or WMI is found not to be the responsible party for the obligations under the WMB CIC Agreements (the "Alternate WSP Claim," and, together with the New CIC Claim, the "New Claims").

29. In making their requests, the Claimants will exponentially increase the amount of their respective Original Claims. Zarro's New CIC Claim would increase the Zarro

³ A copy of the Wamu Severance Plan (Amended and Restated, effective January 1, 2008) is attached hereto as **Exhibit 3**.

Original Claim by \$820,000, or more than **366%**, from an original claim amount of \$224,000 to an amended claim amount of \$1,044,000. Likewise, Berens's New CIC Claim would increase the Berens Original Claim by \$1,491,712, or more than **441%**, from an original claim amount of \$337,776.37 to an amended claim amount of \$1,829,488.37.⁴

OBJECTION

30. The Motions, filed almost four years after the Bar Date and more than one year after confirmation of the Plan should be denied because (i) in attempting to amend the Original Claims to assert claims pursuant to the Claimants' respective WMB CIC Agreement, or in the alternative, the Wamu Severance Plan, the Motions baldly assert new claims under the guise of amendments; and (ii) the Claimants fail to satisfy the "excusable neglect" standard in *Pioneer Investment Services Co. v. Brunswick Associates*, 507 U.S. 380 (1993). Alternatively, should the Court find that the New Claims relate-back to the Original Claims and are actually amendments and not new claims, the Motions should still be denied because the balance of the equities weighs in WMILT's favor and against permitting the amendments.

31. Importantly, the Claimants' Alternate WSP Claims are distinguishable from the Wamu Severance Plan amendments sought by claimants in February to which WMILT did not object.⁵ Specifically, in all prior motions to amend, the claimants had already filed proofs of claim for amounts pursuant to their respective change in control agreements. In

⁴ The Motions incorrectly assert, among other things, that (i) the New Claims relate back to the Original Claims because all arise from the Claimants' employment relationship with Washington Mutual, and are therefore amendments and not new claims; and (ii) the amendments should be permitted because the Claimants satisfy the five factors set forth in *Foman v. Davis*, 371 U.S. 178 (1962), that courts use in deciding whether to grant leave to amend a federal complaint.

⁵ The Motions misrepresent WMILT's willingness to allow amendments related to alternative theories of recovery pursuant to the Wamu Severance Plan. *See e.g.*, Zarro Motion ¶¶ 6, 23. Specifically, in responding to prior motions to amend, WMILT did not object to amendments which sought leave to assert an alternate theory of recovery pursuant to the Wamu Severance Plan to the extent a claimant had timely-filed an original proof of claim seeking payments pursuant to the claimant's respective "change in control" agreement as the two agreements are related. Here, the Claimants did not seek payments in the Original Claims pursuant to their respective "change in control" agreements.

seeking leave to amend, those claimants were simply adding an alternate claim to the change in control agreement, which formed the basis of their original claim, pursuant to the Wamu Severance Plan should the Court determine that a “change in control” did not occur or WMI is found not to be the responsible party for the obligations under those agreements. Thus, the prior Wamu Severance Plan amendments were true alternate claims to original components already included in the claimants’ original timely-filed proofs of claims. Here, the Claimants did not include their respective change in control agreements in their original proofs of claims. Instead, the Claimants are seeking to amend the Original Claims to include amounts allegedly owed pursuant to the WMB CIC Agreements and, should the court grant those amendments, to further amend their *amended* claims to seek an alternate claim to those agreements pursuant to the Wamu Severance Plan.⁶ There is a vast difference between the two.

The Claimants Are Asserting New Claims, Not True Amendments

32. The decision to grant or deny a post-bar date amendment to a timely filed proof of claim rests within the sound discretion of the bankruptcy court. *See In re Ben Franklin Hotel Assocs.*, 186 F.3d 301, 309 (3d Cir. 1999). Amendments may not be used as a mechanism to circumvent the bar date; therefore, a bankruptcy court must carefully scrutinize a post-bar date amendment to ensure that the alleged amendment truly amends a timely-filed proof of claim. *See Midland Cogeneration Venture Ltd. P’ship v. Enron Corp. (In re Enron Corp.)*, 419 F.3d 115, 133 (2d Cir. 2005). In particular, a “bar [date] order serves the important purpose of enabling the parties to a bankruptcy case to identify with reasonable promptness the identity of

⁶ It is unclear whether the Claimants are also seeking leave to amend to assert a new claim pursuant to the Wamu Severance Plan irrespective of whether the Court grants the Claimants’ motion to amend with respect to the New CIC Claims. Nonetheless, whether the Claimants are seeking to assert an alternate claim to their New CIC Claims pursuant to the Wamu Severance Plan or, should the Court deny their motion to amend with respect to the New CIC Claims, a separate and distinct claim pursuant to the Wamu Severance Plan, any such amendments pursuant to the Wamu Severance Plan are new claims because the Claimants’ Original Claims did not seek payments under either their respective WMB CIC Agreements or the Wamu Severance Plan.

those making claims against the bankruptcy estate and the general amount of the claims, a necessary step in achieving the goal of successful reorganization.” *In re Keene Corp.*, 188 B.R. 903, 907 (Bankr. S.D.N.Y. 1995) (internal quotation marks omitted). It “does not function merely as a procedural gauntlet . . . but as an integral part of the reorganization process.” *Id.* (internal quotation marks omitted).

33. To determine whether to allow a creditor to amend its proof of claim, courts typically engage in a two part inquiry. *See In re Enron Corp.*, 01-16034 AJG, 2007 WL 610404, at *4 (Bankr. S.D.N.Y. Feb. 23, 2007). First, courts consider whether the motion asserts a new claim or whether it truly seeks to amend a timely filed proof of claim. *See id.* Second, the Court must weigh several equitable factors to determine whether the amendment should be allowed. *See id.*; *Integrated Res., Inc. v. Ameritrust Co. Nat’l Ass’n (In re Integrated Res., Inc.)*, 157 B.R. 66, 70 (S.D.N.Y. 1993); *In re McLean Indus., Inc.*, 121 B.R. 704, 708 (Bankr. S.D.N.Y. 1990). “The second prong is to be applied only if the first prong is satisfied and the claim qualifies as an amendment and not simply a new claim.” *In re Enron Corp.*, 2007 WL 610404, at *4 (internal quotation marks omitted).

34. In determining whether the first prong is satisfied, many bankruptcy courts apply Federal Rule of Civil Procedure 15 (“Rule 15”). *See In re MK Lombard Group I, Ltd.*, 301 B.R. 812, 816 (Bankr. E.D. Pa. 2003) (noting that “[t]he trend of the cases appear to apply Rule 7015 to contested matters” and citing cases); *see also In re McLean Indus., Inc.*, 121 B.R. at 708 (noting that “[a]lthough most bankruptcy courts do not discuss Rule 15 when determining the propriety of an amendment under the Code, several courts . . . have found Rule 15 to control amendments to claims”); *see also In re Enron Corp.*, 2007 WL 610404, at *4 n.4 (noting that Federal Rule of Bankruptcy Procedure (“Bankruptcy Rule”) 7015 provides that Rule 15 applies

in adversary proceedings and Bankruptcy Rule 9014 permits a bankruptcy court to extend Rule 7015 to contested matters as well as adversary proceedings). Under Rule 15(c)(2), a subsequent claim is an amendment and not a new claim if it relates back to the date of the original, timely-filed proof of claim. That is, if the subsequent claim “[arises] out of the conduct, transaction or occurrence set out—or attempted to be set out—in the original pleading.” *In re Quinn*, 423 B.R. 454, 463 (Bankr. D. Del. 2009) (quoting Fed. R. Civ. P. 15(c)).

35. If the original claim did not “give fair notice of the conduct, transaction or occurrence that forms the basis of the claim asserted in the amendment,” then the amendment asserts a new claim and will not be allowed. *In re Ben Franklin Hotel Assocs.*, 1998 WL 94808, at *3. This requirement demands that the original proof of claim provide the debtor with notice of a creditor’s “intention to pursue its rights under the . . . Agreement[]” that the creditor is attempting to amend its original proof of claim to pursue. *In re SemCrude, L.P.*, 443 B.R. 472, 479 (Bankr. D. Del. 2011); see *In re Integrated Res., Inc.* 157 B.R. at 70 (internal quotation marks omitted) (holding that notice must “evidenc[e] an intention to hold the estate liable.”).

36. Moreover, “to be within the scope of a permissible amendment, the second claim should not only be of the same nature as the first **but also reasonably within the amount** to which the first claim provided notice.” *In re Integrated Res., Inc.* 157 B.R. at 72 (internal quotation marks omitted). “In fact, when an amended claim increases a claim by a material amount it is, in effect, a new claim not entitled to be freely allowed.” *In re Uvino*, 09-15225 BRL, 2012 WL 892501, at *3-4 (Bankr. S.D.N.Y. Mar. 14, 2012) (internal quotation marks omitted) (citing *In re Stavriotis*, 977 F.2d 1202, 1205 (7th Cir. 1992) (upholding bankruptcy court’s disallowance of an amendment to a claim because of the “dramatic increase in the claim amount which came as an unfair surprise to other creditors, and perhaps to the debtors”)). The

party asserting the relation-back bears the burden of proof on this issue. *In re Enron Corp.*, 2007 WL 610404, at *5.

37. An amendment will satisfy Rule 15 if its purpose is to (1) “cure defects in a claim as originally filed,” (2) “describe a claim with greater particularity,” or (3) “plead new theories of recovery *on facts set forth* in the original claim.” *In re SemCrude*, 443 B.R. at 477 (emphasis added). Here, the Motions rely on entirely new facts in asserting the New Claims as alleged amendments and, therefore, the Claimants do not meet their burden on this threshold inquiry.

38. More importantly, the Motions *do not* plead new theories of recovery on the same “conduct, transaction or occurrence set out—or attempted to be set out—in [the Claimants’] original pleading[s]” under Rule 15. The proposed “amendments” are based on entirely new agreements or benefit plans, the Claimants’ respective WMB CIC Agreements and the Wamu Severance Plan, rather than any of those included in or that formed the basis of, the Original Claims, namely, a WMB RBA, and in Berens’s case, a WMB RBA and the SERAP. Thus, the Original Claims did not “evidenc[e] an intention to hold [WMILT] liable” under a WMB CIC Agreement or the Wamu Severance Plan and the Claimants’ proposed amendments fail to relate back to the Original Claims. *Cf. In re SemCrude*, 443 B.R. at 477 (holding that claimant’s claim for indemnity and breach of contract related back to his original proof of claim that asserted contingent claims for “any and all rights” it may have under state contract law and that *referenced the applicable contracts* between the creditor and debtors); *In re Edison Brothers Stores, Inc.*, No. 99-532(JCA), 2002 WL 999260, at *4 (Bankr. D. Del. May 15, 2002) (holding that the debtor had fair notice of the amendment where the creditor only sought to increase the amount of the creditor’s original proof of claim).

39. Moreover, the New Claims are not “*reasonably within the amount* to which the [Original Claims] provided notice” and, thus, should not be freely allowed. *See In re Integrated Res., Inc.* 157 B.R. at 72; *see also In re Uvino*, 09-15225 BRL, 2012 WL 892501, at *3-4 (Bankr. S.D.N.Y. Mar. 14, 2012). Unlike Sharma’s new Retention Bonus Agreement claim of \$74,737, which the court previously allowed, and which increased Sharma’s original claim by only about 13%, from \$581,627.55 to \$656,364.55, Zarro and Berens’s New CIC Claims would more than quadruple their Original Claims. Specifically, the amendments sought would increase the Zarro Original Claim by \$820,000, or **more than 366%**, from an original claim amount of \$224,000 to an amended claim amount of \$1,044,000. Additionally, the Berens’s New CIC Claim would increase the Berens Original Claim by \$1,491,712, or **more than 441%**, from an original claim amount of \$337,776.37 to an amended claim amount of \$1,829,488.37. While neither of the claims, as amended, has any legal or factual support for being ultimately allowed, likewise, neither amendment is even arguably “*reasonably within the amount* to which the [Original Claims] provided notice” and, thus, should not be freely allowed. *In re Integrated Res., Inc.* 157 B.R. at 72; *cf. In re Uvino*, 09-15225 BRL, 2012 WL 892501, at *3-4 (Bankr. S.D.N.Y. Mar. 14, 2012) (denying an amendment where claimant’s attempted amendment would increase its “timely filed proofs of claim by more than \$750,000—an increase of over 350%” because “the Second POC failed to give notice that [the claimant] intended to hold the Debtors liable for an additional claim of \$788,110.64).

The Claimants Have Failed to Establish Excusable Neglect Under *Pioneer* and the New Claims Should Be Disallowed

40. As the Court has previously noted, the Claimants’ late-filed New Claims may only be permitted post-bar date under Federal Rule of Bankruptcy Procedure 9006(b)(1) if, on motion, the Court determines that the Claimants’ failure to comply with the Bar Date was the

result of “excusable neglect.” Fed. R. Bankr. P. 9006 (b)(1); *see Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 382–83 (1993); *In re Flyi, Inc.*, No. 05-20011 (MFW), 2008 WL 170555, at *3 (Bankr. D. Del. Jan. 16, 2008). “As the party seeking relief, the creditor seeking to file a late proof of claim bears the burden of proving excusable neglect by a preponderance of the evidence.” *In re Cable & Wireless USA, Inc.*, 338 B.R. 609, 613 (Bankr. D. Del. 2006).

41. As the statute and case law make clear, neglect alone is insufficient for the Court to permit a claimant to assert new claims after expiration of the Bar Date. Rather, the neglect must be “excusable.” *See Pioneer*, 507 U.S. at 395 (discussing the meaning of “neglect” and subsequently noting that “[t]his leaves, of course, [Bankruptcy Rule 9006’s] requirement that the party’s neglect of the bar date be ‘excusable’”); *Global Indus. Techs., Inc. v. Ash Trucking Co. (In re Global Indus. Techs., Inc.)*, 375 B.R. 155, 156 (Bankr. W.D. Pa. 2007) (“*Pioneer Investment* does not provide an ‘out’ for all negligent conduct. The negligent conduct must be excusable.”); *see also In re JWP Info. Servs., Inc.*, 231 B.R. 209, 211 (Bankr. S.D.N.Y. 1999) (noting that the “precise definition” of excusable neglect “is elusive” but that, nevertheless, “[i]t is not . . . a rule designed to excuse all defaults, or even excuse those defaults where relief would not prejudice the other party.”).

42. Indeed, in *Pioneer*, the Supreme Court developed a two-step test for determining whether the court should permit a late-filed claim as a result of the movant’s excusable neglect. *See generally* 507 U.S. 380. A movant first must show that its failure to timely respond to a notice or order constituted neglect, which is normally associated with a movant’s inadvertence, mistake, or carelessness. *Id.* at 387-88. After establishing neglect, the movant must show, by a preponderance of the evidence, that the neglect was excusable, which is

determined by balancing the following factors: (1) the danger of prejudice to the debtor; (2) the length of the delay and whether or not it would impact the case; (3) the reason for the delay; in particular, whether the delay was within the control of the movant; and (4) whether the movant acted in good faith. *Id.* at 395.

43. Moreover, in *In re O'Brien Environmental Energy, Inc.*, 188 F.3d 116, 126 (3d Cir. 1999), the Third Circuit provided several factors that courts should consider in analyzing *Pioneer's* first factor, prejudice, including: (a) the adverse impact on the judicial administration of the case; (b) whether the plan was filed or confirmed with knowledge of the existence of the claim; (c) the disruptive effect that the late filing would have on the plan or upon the economic model upon which the plan was based; (d) the size of the new claim; and (e) whether allowing the claim would open the floodgates to other similar claims.

44. Courts generally focus on the third factor—the reason for the delay—as the predominant factor in a *Pioneer* analysis. *Williams v. KFC Nat'l Mgmt. Co.*, 391 F.3d 411, 415-16 (2d Cir. 2004); *see United States v. Torres*, 372 F.3d 1159, 1163 (10th Cir. 2004) (“fault in the delay [is] perhaps the most important single factor in determining whether neglect is excusable”); *Silivanch v. Celebrity Cruises, Inc.*, 333 F.3d 355, 366 (2d Cir. 2003), *cert. denied*, 540 U.S. 1105 (2004) (“We and other circuits have focused on the third factor: the reason for the delay, including whether it was within the reasonable control of the movant.”) (quoting *Pioneer*, 507 U.S. at 395); *Graphic Commc'ns Int'l Union Local 12-N v. Quebecor Printing Providence, Inc.*, 270 F.3d 1, 5 (1st Cir. 2001) (reason for delay always a critical factor); *Chanute v. Williams Natural Gas Co.*, 31 F.3d 1041, 1046 (10th Cir. 1994); *see In re Kmart Corp.*, 381 F.3d 709, 715 (7th Cir. 2004) (noting rule in several sister circuits that “fault in the delay is the preeminent factor”). Importantly, “[w]hile belated *amendments* will ordinarily

be ‘freely allowed’ where other parties will not be prejudiced, belated new claims will ordinarily be denied, even absent prejudice, unless the reason for the delay is compelling.” *In re Flyi, Inc.*, 2008 WL 170555, at *4 (internal quotation marks omitted) (quoting *In re Enron Corp*, 419 F.3d at 133-34) (emphasis added).

45. Balancing the foregoing *Pioneer* factors demonstrates that, based on the totality of the facts and circumstances, the Claimants cannot carry the burden of establishing “excusable neglect” by a preponderance of the evidence. First, the Motions only vaguely assert that the Claimants were not represented by counsel when they filed the Original Claims and inadvertently failed to include the New Claims. Upon information and belief, the Claimants received actual notice of the Bar Date, which, among other things, established the Bar Date, explained that the Bar Date was “the deadline for each person . . . to file a proof of claim . . . against any of the Debtors that arose on or prior to September 26, 2008,” and provided that “*a claimant should consult an attorney* if the claimant has any questions, including whether to file a proof of claim.” See D.I. 0875. An excerpt of the Affidavit of Service of notice of the Bar Date is attached hereto as **Exhibit 4**. Although courts must make “reasonable accommodations to protect the rights of pro se litigants, they are not exempt from compliance with relevant rules of procedural and substantive law.” See, e.g., *In re Ginsberg*, 164 B.R. 870, 875 (Bankr. S.D.N.Y. 1994) (applying the excusable neglect standard to decide whether a pro se party should be permitted to file a time-barred complaint objecting to a debtor’s discharge under section 727 of the Bankruptcy Code) (citing *Traguth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983)); *In re Hongjun Sun*, 323 B.R. 561, 566 (Bankr. E.D.N.Y. 2005) (“The Supreme Court has . . . never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel.”) (internal quotation marks omitted).

46. Importantly, the Claimants' amendments are distinguishable from those asserted by Sharma. Specifically, the Court found the potential for excusable neglect with respect to Sharma's failure to include his new Retention Bonus Agreement in his original proof of claim because: (i) he was not represented by counsel at the time he filed his original proof of claim; and (ii) Sharma arguably may not have known whether he had to file a claim for his Retention Bonus Agreement before the Bar Date because his agreement provided for payments, including a payment in August 2009, which was after the March 31, 2009 Bar Date for filing proofs of claim. *See* Hr'g Tr. 30:2-16, March 7, 2013. In contrast, payments pursuant to Berens and Zarro's respective WMB CIC Agreement and the Wamu Severance Plan were all allegedly triggered in September of 2008, well before the Bar Date, when Berens and Zarro's employment with WMB was terminated, WMB was seized by the Federal Deposit Insurance Corporation as receiver, and JPMorgan Chase Bank, N.A. purchased all or substantially all of WMB's assets. Thus, there is no legitimate reason why Berens and Zarro did not file these claims prior to expiration of the Bar Date, let alone almost four years after the Bar Date and more than one year after the Plan was confirmed and consummated.

47. Second, contrary to the Claimants' assertions, permitting the Claimants to assert their New Claims at this juncture will cause prejudice to WMILT. WMILT established March 31, 2009 as the Bar Date. The Motions were filed on March 29, 2013. Therefore, the delay at issue here is a period of almost four years, more than one year after the Plan was confirmed and consummated, and more than five months into the discovery process for the upcoming Employee Claims Hearing. As noted by another court in the Third Circuit, "[r]egardless of the reason, a delay of four years is undoubtedly significant." *In re W.R. Grace & Co.*, CIV.A. 07-536, 2008 WL 687357, at *4 (D. Del. Mar. 11, 2008). In fact, courts have

refused to find excusable neglect in cases with much shorter periods of delay. *See, e.g., New Century TRS Holdings, Inc.*, 465 B.R. at 52 (noting that even a delay as short as two months may be significant if the debtor proceeds expeditiously to resolve outstanding claims); *In re Trump Taj Mahal Assocs.*, 156 B.R. 928 (Bankr. D.N.J. 1993) (finding that late claimants failed to establish excusable neglect after delay of one year). In contrast, the delay in cases where late claimants have established excusable neglect are significantly shorter than the delay at issue here. *See, e.g., Pioneer*, 507 U.S. at 384 (delay of twenty days); *In re O'Brien*, 188 F.3d at 130 (delay of two months).

48. In particular, WMILT was not previously aware of the New Claims when it filed the Omnibus Objections. Thus, WMILT may not rely on those objections as asserting all legal theories relevant to the New Claims. Instead, WMILT will be required to amend its objections. Subject to WMILT's amendments, the Claimants and WMILT may require additional discovery not previously contemplated by WMILT with respect to these specific Claimants. All of the foregoing will undoubtedly disrupt the current settlement and future mediation efforts by WMILT and the Remaining Claimants.

49. Furthermore, allowing the New Claims now would undermine WMILT's reliance on the finality of previous and future orders entered by the Court and would open the door for the rest of the Remaining Claimants to assert belated new claims. *See In re Cable & Wireless USA, Inc.*, 338 B.R. 609, 614 (Bankr. D. Del. 2006) (listing "whether allowance of the claim would open the floodgates to other future claims" as one of the "[r]elevant factors that may be considered when determining whether there is danger of prejudice to the debtors"); *cf. In re Keene Corp.*, 188 B.R. 903, 913 (Bankr. S.D.N.Y. 1995) (finding that movant failed to demonstrate excusable neglect and considering, among other things, that allowing the movant's

late-filed claim “could adversely affect the administration of the case by possibly opening the floodgates to many similar claims”); *In re Hill Stores Co.*, 167 B.R. 348, 352 (Bankr. S.D.N.Y. 1994) (declining to allow a late-filed ballot on the basis of excusable neglect and noting that allowing the ballot “could lead to litigation commenced by any of the 51 others who similarly did not timely remit their class 6 election ballots but have so far chosen not to litigate the issue”); *In re Specialty Equip. Cos.*, 159 B.R. 236, 239 (Bankr. N.D. Ill. 1993) (“Allowance of [movant’s late-filed] claim would set a precedent that is an invitation to havoc.”).

50. Unlike cases where there is “no evidence that other claimants will rush to th[e] Court seeking to amend their claims,” in February alone, eighteen (18) claimants sought to amend their claims. *Cf. McLean Indus., Inc.*, 121 B.R. 704, 709 (Bankr. S.D.N.Y. 1990) (finding the Trust’s floodgate argument unpersuasive where there was “no evidence that other claimants will rush” to amend their claims). Granting the Motions would signal to the rest of the unresolved Remaining Claimants, all of which have asserted claims similar to the Original Claims, that they too may prevail on filing belated new claims pursuant to entirely separate and distinct agreements and/or benefit plans which were neither referenced in, provided in, nor formed the basis of, their original proofs of claim. Opening the floodgates to a continuous influx of additional new claims at this juncture would only increase the adverse effect that new claims would have on the administration of the case and the current settlement efforts by WMILT and the Remaining Claimants, amplifying the need for finality.

51. Importantly, a finding of prejudice is not barred simply because the Claimants are not requesting that WMILT reserve additional amounts for the New Claims. The Third Circuit has recognized that *Pioneer* requires a “more detailed analysis of prejudice . . . than whether the Plan set aside money to pay the claim at issue,” because “[o]therwise, virtually all

late filings would be condemned by this factor.” *In re O’Brien Env’tl. Energy, Inc.*, 188 F.3d 116, 126 (3d Cir. 1999).

**Even if the Court Determines that the Claimants Are
Asserting Amendments Rather Than New Claims, the
Equities Weigh in Favor of WMILT and the Amendments Should be Denied**

52. In order to permit an amendment, under the two-prong test discussed above, the court must find that the equities balance in the movants’ favor. *See generally In re Enron Corp.*, 419 F.3d 115. Under the first prong, the court must determine whether the purported “amendment” relates back to a timely filed proof of claim and is actually an amendment rather than a new claim. *Id.* at 133. Under the second prong, the court must weigh the following five equitable factors in determining whether to permit the amendment: (1) undue prejudice to the opposing party; (2) bad faith or dilatory behavior on the part of the claimant; (3) whether other creditors would receive a windfall were the amendment *not* allowed; (4) whether other claimants might be harmed or prejudiced; and (5) the justification for the inability to file the amended claim at the time the original claim was filed. *See In re Enron Corp.*, 298 B.R. 513, 524 (Bankr. S.D.N.Y. 2003); *see also In re Enron Corp.*, 419 F.3d at 133; *cf. In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997) (among the grounds justifying denial of leave to amend a federal complaint are undue delay, bad faith, dilatory motive, prejudice, and futility); *In re SemCrude, L.P.*, 443 B.R. 472, 476 (Bankr. D. Del. 2011) (same).

53. Even if the Court were to determine that the Claimants are asserting amendments and not new claims, an analysis of the five foregoing equitable factors demonstrates that the balance of the equities weighs in WMILT’s favor and the amendments should be denied.

54. Contrary to the Claimants’ assertions, permitting the Claimants to assert their New Claims at this juncture will cause prejudice to WMILT. WMILT established March

31, 2009 as the Bar Date. The Motions were filed on March 29, 2013. Therefore, the delay at issue here is a period of almost four years, more than one year after the Plan was confirmed and consummated, and more than five months into the discovery process for the upcoming Employee Claims Hearing. Moreover, WMILT was not previously aware of the New Claims when it filed the Omnibus Objections. Thus, WMILT may not rely on those objections as asserting all legal theories relevant to the RBA Claim. Instead, WMILT will be required to amend its objections. Subject to WMILT's amendments, the Claimants and WMILT may require additional discovery not previously contemplated by WMILT with respect to these specific Claimants. All of the foregoing will undoubtedly disrupt the current settlement and future mediation efforts by WMILT and the Remaining Claimants.

55. Furthermore, allowing the New Claims now would undermine WMILT's reliance on the finality of previous and future orders entered by the Court and would open the door for the rest of the Remaining Claimants to assert belated new claims. *See In re Cable & Wireless USA, Inc.*, 338 B.R. 609, 614 (Bankr. D. Del. 2006) (listing "whether allowance of the claim would open the floodgates to other future claims" as one of the "[r]elevant factors that may be considered when determining whether there is danger of prejudice to the debtors"); *cf. In re Keene Corp.*, 188 B.R. 903, 913 (Bankr. S.D.N.Y. 1995) (finding that movant failed to demonstrate excusable neglect and considering, among other things, that allowing the movant's late-filed claim "could adversely affect the administration of the case by possibly opening the floodgates to many similar claims"); *In re Hill Stores Co.*, 167 B.R. 348, 352 (Bankr. S.D.N.Y. 1994) (declining to allow a late-filed ballot on the basis of excusable neglect and noting that allowing the ballot "could lead to litigation commenced by any of the 51 others who similarly did not timely remit their class 6 election ballots but have so far chosen not to litigate the issue");

In re Specialty Equip. Cos., 159 B.R. 236, 239 (Bankr. N.D. Ill. 1993) (“Allowance of [movant’s late-filed] claim would set a precedent that is an invitation to havoc.”).

56. Unlike cases where there is “no evidence that other claimants will rush to th[e] Court seeking to amend their claims,” in February alone, eighteen (18) claimants sought to amend their claims. *Cf. McLean Indus., Inc.*, 121 B.R. 704, 709 (Bankr. S.D.N.Y. 1990) (finding the Trust’s floodgate argument unpersuasive where there was “no evidence that other claimants will rush” to amend their claims). Granting the Motions would signal to the rest of the unresolved Remaining Claimants, all of which have asserted claims similar to the Original Claims, that they too may prevail on filing belated new claims pursuant to entirely separate and distinct agreements and/or benefit plans which were neither referenced in, provided in, nor formed the basis of, their original proofs of claim. Opening the floodgates to a continuous influx of additional new claims at this juncture would only increase the adverse effect that new claims would have on the administration of the case and the current settlement efforts by WMILT and the Remaining Claimants, amplifying the need for finality.

57. Moreover, the Claimants’ justifications plainly do not demonstrate an *inability* to file the New Claims at the same time as the Original Claims. The Claimants only state that they “inadvertently failed to include” the New Claims. *See, e.g.*, Berens Motion ¶ 3. Accordingly, the Claimants do not cite a valid reason why they *could not* include the New Claims along with the Original Claims, let alone a compelling reason as required for post-confirmation amendments. Indeed, the United States Court of Appeals for the Seventh Circuit has held that “[I]eave to amend should be freely granted *early* in a case, but passing milestones in the litigation make amendment less appropriate. . . Confirmation of the plan of reorganization is a . . . milestone. Once that milestone has been reached further changes should be allowed only

for compelling reasons.” *Holstein v. Brill*, 987 F.2d 1268, 1270 (7th Cir. 1993) (citing *Foman v. Davis*, 371 U.S. 178 (1962) (emphasis added) (denying motion by former employee to amend and increase wage claim against chapter 11 debtor post-confirmation absent a compelling reason)); *In re Winn-Dixie Stores, Inc.*, 639 F.3d 1053, 1056 (11th Cir. 2011) (following the Seventh Circuit and holding that *res judicata* precludes post-confirmation amendments absent some “compelling reason”); *In re NextMedia Group Inc.*, No. 09–14463 (PJW), 2011 WL 4711997, at *3 (D. Del. Oct. 6, 2011) (applying the law of the Seventh and Eleventh Circuits and holding that absent a compelling reason, post-confirmation amendments should be denied); *see also In re Kaiser Group International, Inc.*, 289 B.R. 597, 607 n.8 (Bankr. D. Del. 2003) (recognizing that claims may only be amended before confirmation of a plan of reorganization); *In re New River Shipyard, Inc.*, 355 B.R. 894, 909 (Bankr. S.D. Fla. 2006) (“[A] post-confirmation amendment of a claim should only be allowed for compelling reasons.”).

58. Finally, creditors of WMILT would be unduly prejudiced by granting the Motions by potentially reducing the amount of funds available for distributions. If the Motions are granted, WMILT will have to expend funds to amend its substantive objections and will likely have to propound and provide additional discovery relating to the Claimants. All amounts expended to defend against the Claimants’ alleged amendments serve no purpose but to decrease the amount available to deserving creditors.

RESERVATION OF RIGHTS

59. To the extent the Court grants the Motions in their entirety, WMILT reserves the right to include any additional objections or bring additional adversary proceedings it may have related to the claims, and to the extent WMILT determines it needs additional discovery, to propound additional discovery related to the claims.

CONCLUSION

60. WMILT submits that there is no basis on which the Court should grant the relief requested in the Motions.

WHEREFORE WMILT respectfully requests that the Court deny the Motions and grant WMILT such other and further relief as is just.

Dated: Wilmington, Delaware
April 16, 2013

/s/ Katherine Good

Mark D. Collins (No. 2981)
Paul N. Heath (No. 3704)
L. Katherine Good (No. 5101)
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– and –

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Attorneys to WMI Liquidating Trust

EXHIBIT 1

(Zarro Original Proof of Claim)

B 10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT		District of Delaware	PROOF OF CLAIM
Name of Debtor: Washington Mutual, Inc., et al.		Case Number: 08-12229	
<i>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</i>			
Name of Creditor (the person or other entity to whom the debtor owes money or property): Michael R. Zarro		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.	
Name and address where notices should be sent: Michael R. Zarro 4735 225th Ave SE, Sammamish, WA 98075		Court Claim Number: _____ (If known)	
Telephone number: (206) 500-4962		Filed on: _____	
Name and address where payment should be sent (if different from above): Michael R. Zarro 4735 225th Ave SE, Sammamish, WA 98075		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.	
Telephone number: (206) 500-4962		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
1. Amount of Claim as of Date Case Filed: \$ <u>224,000.00</u>		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.	
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.		Specify the priority of the claim.	
If all or part of your claim is entitled to priority, complete item 5.			
<input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).	
2. Basis for Claim: <u>Retention Bonus</u> (See instruction #2 on reverse side.)		<input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).	
3. Last four digits of any number by which creditor identifies debtor: _____		<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).	
3a. Debtor may have scheduled account as: <u>Zarro, Michael</u> (See instruction #3a on reverse side.)		<input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7).	
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.		<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).	
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other		<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)().	
Describe:		Amount entitled to priority: \$ <u>10,950.00</u>	
Value of Property: \$ _____ Annual Interest Rate: % _____		*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
Amount of arrearage and other charges as of time case filed included in secured claim,			
If any: \$ _____ Basis for perfection: _____			
Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____			
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.			
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)			
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.			
If the documents are not available, please explain:			
Date:	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.		
/s/ Michael R. Zarro	<i>[Signature]</i> 3/15/09		

RECEIVED

MAR 17 2009

KURTZMAN CARSON CONSULTANTS

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.



0812229031700000000026



To: Michael Zarro, Division Exec – Home Loans Operations Strategy
From: David Schneider, President Home Loans
Date: April 11, 2008

As you know, WaMu is restructuring certain areas of the business, including Home Loans. We are uncertain about the details of the restructuring that may take place.

Because we consider you to be a highly-talented member of our team, we would like to offer you a position in the company consistent with your talents and company needs. However, we cannot do that until the full needs of the enterprise have been spelled out in detail, which we expect to happen soon. Accordingly, we are pleased to offer you an arrangement that demonstrates our sincere desire to keep you on board as a continuing member of our team during this transition and that encourages you to do so.

Provided that the conditions described below are satisfied, you will earn the following:

- ◇ **Base salary and bonus** through April 1, 2009 (the "Retention Date") ("Base Salary and Bonus Arrangement."), even if your last day of work comes before the retention date. These amounts to be paid in the normal course of your employment. If WaMu terminates your employment prior to the Retention Date and the termination is not related to a violation of WaMu policy or its Code of Conduct, these amounts will be paid in lump sum at time of termination.
- ◇ **Retention Bonus** in the gross amount of \$224,000, less withholdings, paid the earlier of April 1, 2009 or termination date.

Conditions for earning the Base Salary and Bonus Arrangement and Retention Bonus.

1. You must remain continuously employed with WaMu through the Retention Date. However, if WaMu terminates your employment prior to the Retention Date and the termination is not related to a violation of WaMu policy or its Code of Conduct, you will remain eligible for the Base Salary and Bonus arrangement and the Retention Bonus provided that all of the other conditions are satisfied. This means that if you resign before the Retention Date, you will not be eligible for the Base and Salary Arrangement or Retention Bonus.
3. You cooperate as requested by WaMu with the transition, including assisting in transitional roles as needed.
4. You comply with all contractual obligations that you have with WaMu, including obligations under agreements related to the grant of restricted stock.
5. Any amounts to which you may be entitled under the Worker Authorization and Retraining Notification Act and will be subtracted from amounts described above, except that nothing will be offset against base salary and bonus earned for time actually worked.

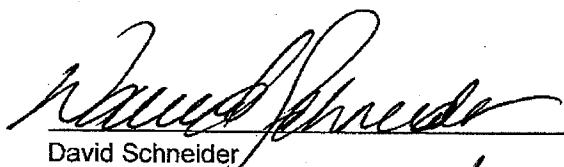


WaMu

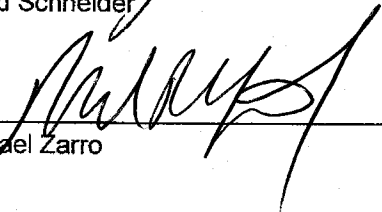
In addition to the above, if we do not provide you with an offer of another position and you qualify for benefits under our Severance Plan, you will be entitled to severance benefits in accordance with the terms and conditions of the Severance Plan.

As mentioned above, we hope we will be offering you a new position that will meet your needs and those of the company, but we cannot promise that this will be the case. What we do promise is that if all of the conditions described above are satisfied, you will earn and be paid the amounts described in this offer. This arrangement does not restrict or limit your at-will relationship with the company or any of your existing obligations under agreements with the company relating to employment, including your arbitration agreement.

Please sign below to acknowledge your acceptance of the terms of this offer and return it to me by April 18, 2008. Thanks again for being part of our team during this challenging time.



David Schneider



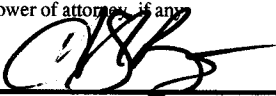
Michael Zarro

Date

EXHIBIT 2

(Berens Original Proof of Claim)

B 10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT District of Delaware		PROOF OF CLAIM
Name of Debtor: Washington Mutual, Inc. 08-12229 (MFW)		Case Number: 08-12229
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Henry J Berens /Name ID: 5437106 /Pack No: 4985		<input checked="" type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ (If known)
Name and address where notices should be sent: Henry J. Berens 724 Promenade Pointe Drive St. Augustine Florida 32095 USA		
Telephone number: (904) 810-0633		Filed on: <u>03/17/2009</u>
Name and address where payment should be sent (if different from above): Telephone number:		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ <u>337,776.37</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____). Amount entitled to priority: \$ <u>10,950.00</u> *Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
2. Basis for Claim: <u>Serap and retention funds</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: <u>2398</u> 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Date: <u>03/20/2009</u>	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. 	

FOR COURT USE ONLY
RECEIVED
 MAR 24 2009

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. § 1572



081222909032400000000044

Washington Mutual, Inc.

March 11, 2009

Henry Berens
724 Promenade Pointe Dr.
St. Augustine, FL 32095

RE: Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan (the "Plan")

Dear Henry:

According to our records, you are a participant in the above referenced Plan. As you know, Washington Mutual, Inc. ("WMI") filed a voluntary petition with the bankruptcy court on September 26, 2008, the day after its banking subsidiary, Washington Mutual Bank, was placed in receivership by federal regulators.

The information below is being provided for your reference and reflects the value of your account as of September 26, 2008 as computed by Fidelity.

Plan Name:	Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan
Participant Name:	Henry Berens
Employee ID number:	u206888
09/26/2008 Balance:	\$47,776.37

Please note that if you were a participant in another nonqualified plan sponsored by WMI, you will receive information regarding that plan under separate cover.

The above information is provided to you for informational purpose only.

WMI has not independently verified the accuracy of the amount of your account balance referenced above as computed by Fidelity and WMI reserves the right to correct or otherwise change the amounts provided herein in accordance with the terms of the Plan.

The information hereby provided to you does not constitute a promise to pay or confer any additional rights to the amount of your account balance referenced above in accordance with the terms of the Plan.

Sincerely,



Robert Williams
Washington Mutual, Inc.



March 19, 2008

Henry J. Berens
u206888

Dear John,

Re: Special Bonus Opportunity

I'm pleased to offer you this opportunity to earn a special bonus of \$580,000 as a reward for your continued service to Washington Mutual (the "Company" or "WaMu").

Terms of Offer

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

If you fulfill these requirements and also meet the other conditions in this letter, you will be entitled to the bonus of \$580,000 . Fifty percent of the bonus will be paid in a lump sum, less taxes and withholding, in the pay advice on June 15, 2008, and the remaining fifty percent will be paid in a lump sum, less taxes and withholding, in the pay advice on January 15, 2009. This payment will be in addition to any other bonus for which you may normally be eligible.

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

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



Henry J. Berens

March 19, 2008

Page 2

Agreement Not to Solicit Personnel

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

Other Terms


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

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

Sincerely,


David Schneider

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

Signature: 
Henry J. Berens u206888

Date: 3/19/08

EXHIBIT 3

(Wamu Severance Plan)

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:

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

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.

EXHIBIT 4

(Excerpt of Affidavit of Service of Notice of the Bar Date)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

----- X
 In re : Chapter 11
 :
 Washington Mutual, Inc., *et al.*,¹ : Case No. 08-12229 (MFW)
 :
 Debtors. : (Jointly Administered)
 :
 ----- X

AFFIDAVIT OF SERVICE

I, Timothy J. Kelsey, being duly sworn according to law, depose and say that I am employed by Kurtzman Carson Consultants LLC, the Court appointed claims and noticing agent for the Debtors in the above-captioned cases.

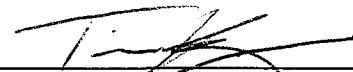
On February 4, 2008, I caused to be served the following documents listed below upon the parties listed on Exhibit C via U.S. First Class mail:

- **Notice of Deadlines for Filing Proofs of Claims** [a copy of which is attached hereto as Exhibit A]
- **Proof of Claim Form** [a blank copy of which is attached hereto as Exhibit B]

In addition, on February 4, 2008, I caused to be served the following document listed below upon the parties listed on Exhibit D via U.S. First Class mail:

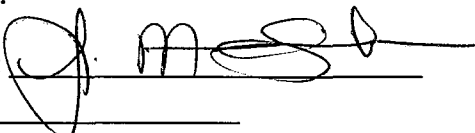
- **Notice of Deadlines for Filing Proofs of Claims** [a copy of which is attached hereto as Exhibit A]

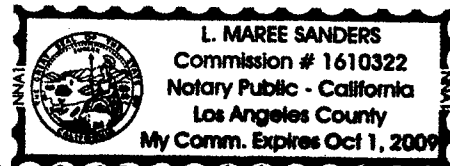
Dated: February 9, 2009


 Timothy J. Kelsey

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on February 9, 2009, by Timothy J. Kelsey, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature: 



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

Exhibit A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X	
	:	
<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> ¹	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	
	:	
	X	

NOTICE OF DEADLINES FOR FILING PROOFS OF CLAIMS

TO ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST THE FOLLOWING ENTITIES (COLLECTIVELY, THE “DEBTORS”):

Washington Mutual, Inc., Case No. 08-12229	WMI Investment Corp., Case No. 08-12228
---	--

PLEASE TAKE NOTICE THAT, on September 26, 2008, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11, United States Code (the “Bankruptcy Code”).

PLEASE TAKE FURTHER NOTICE THAT, on January 30, 2009, the United States Bankruptcy Court for the District of Delaware (the “Court”) having jurisdiction over the Debtors’ chapter 11 cases entered an order (the “Bar Date Order”) establishing **March 31, 2009 at 5:00 p.m. (prevailing Eastern Time)** (the “Bar Date”) as the deadline for each person or entity (including, without limitation, individuals, partnerships, corporations, joint ventures, trusts, and Governmental Units (as defined in section 101(27) of the Bankruptcy Code)) to file a proof of claim (“Proof of Claim”) against any of the Debtors that arose on or prior to **September 26, 2008**.

PLEASE TAKE FURTHER NOTICE THAT, depositors and other creditors of WMB and WMBfsb do not have claims against the Debtors as a result of such deposits or other claims and are not required to file a Proof of Claim in these cases. Such persons or entities should contact the Federal Deposit Insurance Corporation for information regarding the receivership of WMB.

A CLAIMANT SHOULD CONSULT AN ATTORNEY IF THE CLAIMANT HAS ANY QUESTIONS, INCLUDING WHETHER TO FILE A PROOF OF CLAIM.

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

If you have any questions with respect to this notice, you may contact the Debtors' claim agent, Kurtzman Carson Consultants ("KCC") at (866) 381-9100 or the Washington Mutual Restructuring Hotline at (888) 830-4644.

1. WHO MUST FILE A PROOF OF CLAIM

You **MUST** file a Proof of Claim if you have a claim that arose on or prior to September 26, 2008, and it is not a claim described in Section 2 below. Acts or omissions of the Debtors that arose on or prior to September 26, 2008 may give rise to claims against the Debtors that must be filed by the Bar Date, notwithstanding that such claims may not have matured or become fixed or liquidated as of September 26, 2008.

Under section 101(5) of the Bankruptcy Code and as used herein, the word "claim" means: (i) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

2. WHO NEED NOT FILE A PROOF OF CLAIM

You need **not** file a Proof of Claim if:

- (a) You have **already** properly filed a Proof of Claim against the Debtors with the Clerk of the United States Bankruptcy Court for the District of Delaware or KCC in a form substantially similar to Official Bankruptcy Form No. 10;
- (b) Your claim is listed on a Debtor's Schedule D, E, or F (collectively, the "Schedules"), and (i) the claim is **not** described as "disputed," "contingent," or "unliquidated"; (ii) you agree with the amount, nature, and priority of the claim set forth in the Schedules; and (iii) you agree that the claim is an obligation of the specific Debtor which has listed the claim in its Schedules;
- (c) Your claim has been allowed by order of the Court prior to the Bar Date;
- (d) Your claim has been satisfied in full prior to the Bar Date;
- (e) You are a Debtor holding a claim against another Debtor;
- (f) You are an officer, director, or employee asserting **only** a claim for indemnification, contribution, or reimbursement; **provided, however**, you must file a Proof of Claim if you wish to assert any other claims against any of the Debtors, unless another exception identified herein applies;
- (g) Your claim is allowable under sections 503(b) or 507(a) of the Bankruptcy Code as an administrative expense of the Debtors' chapter 11 cases;
- (h) You hold an interest in any Debtor, which interest is based **exclusively** upon the ownership of common or preferred stock, membership interests, partnership interests, or warrants or rights to purchase, sell or subscribe to such a security or interest; **provided, however**, that, if you wish to assert any claim (as opposed to

ownership interest) against any of the Debtors that arises out of or relates to the ownership or purchase of an interest, including claims arising out of or relating to the sale, issuance, or distribution of the interest, you must file a Proof of Claim on or before the Bar Date, unless another exception identified herein applies;

- (i) You are a holder of a claim (a “Noteholder”) for repayment of outstanding principal or interest arising under, or with respect to, the Debtors’ unsecured notes and related documents (collectively, the “Notes”) set forth below:

<u>Principal Amount:</u> ²	<u>CUSIP</u>	<u>Description:</u>	<u>Due Date:</u>
\$1,000,000,000	939322AL7	4.00% Fixed Rate Notes	due 2009
\$500,000,000	939322AW3	Floating Rate Notes	due 2009
\$600,000,000	939322AP8	4.2% Fixed Rate Notes	due 2010
\$250,000,000	939322AQ6	Floating Rate Notes	due 2010
\$500,000,000	939322AE3	8.250% Subordinated Notes	due 2010
\$400,000,000	939322AX1	5.50% Fixed Rate Notes	due 2011
\$400,000,000	939322AT0	5.0% Fixed Rate Notes	due 2012
\$450,000,000	939322AS2	Floating Rate Notes	due 2012
\$500,000,000	939322AU7	Floating Rate Notes	due 2012
\$750,000,000	939322AN3	4.625% Subordinated Notes	due 2014
\$750,000,000	939322AV5	5.25% Fixed Rate Notes	due 2017
\$500,000,000	939322AY9	7.250% Subordinated Notes	due 2017
\$1,150,000,000	93933U08/ 939322848/ 93933U407/ 939322111	5.375% Junior Subordinated Deferrable Interest Debentures/Trust PIERS ³	due 2041

provided, however, that (i) the foregoing exclusion shall not apply to the indenture trustee under each of the indentures pursuant to which the Notes were issued (each an “Indenture Trustee” and, collectively, the “Indenture Trustees”), (ii) each Indenture Trustee shall be required to file one proof of claim on or before the Bar Date for principal, interest, other applicable fees and charges, and/or any amounts due in respect, or on account, of the applicable Notes, (iii) any Noteholder that wishes to assert a claim arising out of or related to the Notes, other than a claim for repayment of outstanding prepetition principal and interest thereunder, shall be required to file a proof of claim on or before the Bar Date, and (iv) the Proof of Claim filed by Wells Fargo Bank, N.A. (“Wells Fargo”) in connection with the Note Documents (as defined in the Bar Date Order) for the Trust PIERS, including with respect to the Declaration of Trust, dated as of April 30, 2001, shall also be recognized and deemed to have been

² Principal Amount due as of date of issuance.

³ “Trust PIERS” refers to the Trust Preferred Income Equity Redeemable Securities Units, issued by Washington Mutual Capital Trust 2001.

filed by Wells Fargo with respect to any principal and interest due to each beneficial holder in connection with such Declaration of Trust; or

- (j) The Court has already fixed a specific deadline for a Proof of Claim to be filed with respect to your claim.

YOU SHOULD NOT FILE A PROOF OF CLAIM IF YOU DO NOT HAVE A CLAIM AGAINST ANY OF THE DEBTORS.

THE FACT THAT YOU HAVE RECEIVED THIS NOTICE DOES NOT MEAN THAT YOU HAVE A CLAIM OR THAT THE DEBTORS OR THE COURT BELIEVE THAT YOU HAVE A CLAIM.

3. CLAIMS ARISING UNDER EXECUTORY CONTRACTS AND UNEXPIRED LEASES

If you are a party to an executory contract or unexpired lease with a Debtor and assert a claim for amounts accrued and unpaid on September 26, 2008 pursuant to such executory contract or unexpired lease (other than a rejection damages claim), you must file a Proof of Claim for such amounts on or before the Bar Date, unless an exception in Section 2 otherwise applies.

If you hold a claim that arises from the rejection of an executory contract or unexpired lease, you **must** file a Proof of Claim based on such rejection on or before the later of (i) the Bar Date, or (ii) the date that is twenty (20) days following the effective date of such rejection (unless the order authorizing such rejection provides otherwise).

4. WHEN AND WHERE TO FILE

All Proofs of Claim must be filed so as to be **received** on or before **the Bar Date**, at the following address:

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

(the "Washington Mutual Claims Processing Center").

Proofs of Claims will be deemed timely filed only if **actually received** by the Washington Mutual Claims Processing Center on or before the Bar Date. Proofs of Claims may **not** be delivered by facsimile, telecopy, or electronic mail transmission.

5. WHAT TO FILE

You may receive a Debtor-specific Proof of Claim form for use in these chapter 11 cases. If your claim is scheduled by a Debtor, the form will also set forth the amount of your claim as scheduled by the Debtors, the specific Debtor against which the claim is scheduled, and whether the claim is scheduled as disputed, contingent, or unliquidated. You will receive a different Proof of Claim form for each claim scheduled in your name by the Debtors. You may utilize the Proof of Claim form(s) provided by the Debtors to file your claim. Additional Proof of Claim forms may be obtained at <http://www.uscourts.gov/bkforms> or <http://www.kccllc.net/wamu>.

If you file a Proof of Claim, your filed Proof of Claim must (i) be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant; (ii) include supporting documentation (if voluminous, attach a summary) or explanation as to why documentation is not available; (iii) be in the English language; (iv) be denominated in United States currency; and (v) conform substantially with the Proof of Claim Form approved pursuant to the Bar Date Order or Official Bankruptcy Form No. 10.

Any holder of a claim against more than one Debtor must file a separate Proof of Claim with each Debtor and all holders of claims must identify on their Proof of Claim the specific Debtor against which the claim is asserted and the case number of that Debtor's bankruptcy case. The Debtors' names and case numbers are set forth above.

If you file a Proof of Claim and wish to receive a clocked-in copy by return mail, you must include with your Proof of Claim an additional copy of your Proof of Claim and a self-addressed, postage-paid envelope.

YOU SHOULD ATTACH TO YOUR COMPLETED PROOF OF CLAIM FORM COPIES OF ANY WRITINGS UPON WHICH YOUR CLAIM IS BASED.

6. CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE BAR DATE

Except with respect to claims described in Section 2 above, any creditor who fails to file a Proof of Claim on or before the Bar Date (whether notice of the Bar Date was actually or constructively received) shall not be permitted to vote on any chapter 11 plan or participate in any distribution in such Debtor's chapter 11 case on account of such claim or to receive further notices regarding such claim or with respect to such Debtor's chapter 11 case.

7. THE DEBTORS' SCHEDULES AND ACCESS THERETO

You may be listed in the Schedules as the holder of a claim against the Debtors.

To determine if and how you are listed on the Schedules, please refer to the description set forth on the customized Proof of Claim you have received regarding the nature, amount, and status of your claim(s). If you received postpetition payments from the Debtors (which payments were authorized by the Court) on account of your claim(s), the Proof of Claim form(s) will reflect the net amount of your claim(s) (*i.e.*, the amount listed in the Schedules reduced by the postpetition payments). If the Debtors believe that you hold claims against more than one Debtor, you will receive multiple Proofs of Claim, each of which will reflect the nature and amount of your claims, as listed in the Schedules.

If you rely on the Debtors' Schedules, it is your responsibility to determine that the claim is accurately listed in the Schedules.

As set forth above, if you agree with the nature, amount, and status of your claim as listed in the Debtors' Schedules, and if you do not dispute that your claim is only against the Debtor specified, and if your claim is not described as "disputed," "contingent," or "unliquidated," you need not file a Proof of Claim. Otherwise, or if you decide to file a Proof of Claim, you must do so before the Bar Date, in accordance with the procedures set forth in this Notice.

If the Debtors amend or supplement their Schedules subsequent to the date hereof, and if an amendment to the Schedules reduces the liquidated amount of a scheduled claim, or reclassifies a

scheduled, undisputed, liquidated, non-contingent claim as disputed, unliquidated, or contingent and the affected claimant has not filed a proof of claim, you may file a proof of claim on the later of (i) the Bar Date or (ii) the first business day following thirty (30) calendar days after the mailing of the notice of such amendment in accordance with Bankruptcy Rule 1009(a), but, in the case of any amendment to the Schedules after the Bar Date where you did not file a proof of claim prior to the Bar Date, only to the extent such proof of claim does not exceed the amount scheduled for such claim before the amendment; provided, however, that you are not entitled to an extension of the Bar Date if an amendment to the Schedules increases the scheduled amount of an undisputed, liquidated, non-contingent claim.

8. EFFECT OF SUBSEQUENT NOTICE

If the Debtors determine after the mailing date of this Notice that an additional party or parties should appropriately receive the Bar Date Notice, the date by which a proof of claim must be filed by such party or parties shall be the later of (i) the Bar Date or (ii) the date that is thirty (30) days from the mailing date of an amended notice to such additional party or parties.

Notwithstanding the above, the last day for any entity asserting a claim arising from the recovery of a voidable transfer will be the later of (i) the Bar Date, or (ii) the first business day that is at least thirty (30) calendar days after the mailing of notice of entry of any order approving the avoidance of the transfer.

Interested parties may examine copies of the Schedules at <http://www.kccllc.net/wamu> or on the Court's electronic docket <http://ecf.deb.uscourts.gov> (a PACER login and password are required and can be obtained through the PACER Service Center at <http://pacer.psc.uscourts.gov>).

DATED: Wilmington, Delaware
January 30, 2009

BY ORDER OF THE COURT

RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
Telephone: (302) 651-7700

– and –

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000

*Attorneys to the Debtors
and Debtors in Possession*

Exhibit B

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor (*check only one*):

Washington Mutual, Inc. 08-12229 (MFW)

WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

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

Court Claim Number: _____
(If known)

Filed on: _____

Your Claim Is Scheduled as Follows:

Telephone number: _____ Email Address: _____

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

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

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

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

Telephone number: _____ Email Address: _____

1. Type of Claim:

Claim existing as of the date case was filed. **Amount of Claim as of Date Case Filed:** \$ _____

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

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

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

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

2. Basis for Claim: _____
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

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

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

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

Describe: _____

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

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

\$ _____ Basis for perfection: _____

Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____

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

Specify the priority of the claim:

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

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

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

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

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

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

Amount entitled to priority:

\$ _____

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

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

If the documents are not available, please explain:

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

FOR COURT USE ONLY

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, there may be exceptions to these general rules.

Name of Debtor, and Case Number:

Check the box of the Debtor against whom you have a claim. If your Claim is against multiple Debtors, complete a separate form for each Debtor.

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. Type of Claim:

State the type of claim being filed and the total amount owed to the creditor. Follow the instructions concerning whether to complete items 4 and 5. Check the box if you are filing the claim on behalf of a governmental unit or 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 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. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your 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:

Use this space to 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.

4. Secured Claim:

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

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

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) 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 to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:

The person filing 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. 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. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case. The Debtors in these Chapter 11 cases are:

Washington Mutual, Inc. 08-12229 (MFW)
WMI Investment Corp. 08-12228 (MFW)

Creditor

A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101(10)

Claim

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

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form at the following address:

By mail, overnight mail, or hand delivery:

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

Secured Claim Under 11 U.S.C. §506(a)

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

Unsecured Claim

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

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

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

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection

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

INFORMATION**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim, or you may access the Claims Agent's system (<http://www.kcccllc.net/wamu>) to view your filed proof of claim.

Offers to Purchase a Claim

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

Governmental Unit

A governmental unit means the United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under title 11), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government. See 11 U.S.C. § 101(27).

Exhibit C

Exhibit C
Creditor Matrix Service List

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
HELEN MAHONEY		33 SENECA TRAIL			WAYNE	NJ	07470	
HELEN MOONEY		14 FAIRLAWN AVENUE			ALBANY	NY	12203	
HELEN MORELLO		1083 ROCKEFELLER DR			SUNNYVALE	CA	94087	
HELEN NAPPI		18 WEST MINEOLA AVENUE			VALLEY STREAM	NY	11580	
HELEN NELSON		PO BOX 1168			MILLER PLACE	NY	11764	
HELEN OEHLE		1544 VALLY FORGE LANE			MELBOURNE	FL	32940	
HELEN P BUSHMAN		326 WINTER PARK			ROCKWALL	TX	75087	
HELEN PINGGERA		10801 JOHNSON BLVD NO A210			SEMINOLE	FL	33772	
HELEN PREDUN		9 BARBARA COURT			GREENLAWN	NY	11740	
HELEN R SHANNON		18540 W MISSOURI AVE			LITCHFIELD PARK	AZ	85340	
HELEN RAFTERY	DBA HARRIETTE A COLE TRUSTEE OF	HELEN RAFTERY TESTAMENTARY TRST	2014 TREVINO AVE		OCEANSIDE	CA	92056	
HELEN RICKER		171 MICHELLE CIRCLE			EDISON	NJ	08820	
HELEN ROBINSON		417 CHARLESTON DR			COOKEVILLE	TN	38501	
HELEN S MAHER		13025 HARTSOOK ST			SHERMAN OAKS	CA	91423-1616	
HELEN S SEABAUGH		11355 W 85TH PL UNIT D			ARVADA	CO	80005	
HELEN SAVOIA		1524 ROYAL GREEN CIRCLE	APT Q104		PORT ST LUCIE	FL	34952	
HELEN SCHULTZ		1636 GREENWOOD AVE			TORRANCE	CA	90503	
HELEN SPOONER		307 GATES AVENUE			BROOKLYN	NY	11216	
HELEN STROZAK		283 QUAIL RUN			ROSWELL	GA	30076	
HELEN SZYMANSKI		2601 BOUND BROOK BLVD NO 107			WEST PALM BEACH	FL	33406	
HELEN ZAHN		63 ASTOR PLACE			ROOSEVELT	NY	11575	
HELEN ZEMAN		6 ASPEN AVENUE			GREENLAWN	NY	11740	
HELENA COTA		681 SO VANCOUVER AVE			LOS ANGELES	CA	90022	
HELENE GUTOWITZ		8418 XANTHUS LANE			WELLINGTON	FL	33414	
HELGA AUSIN		7080 TWIN FAWN TRAILS			VACAVILLE	CA	95688	
HELGA E SHEPARD		14303 HOLLY PARK			HOUSTON	TX	77015	
HELGA P SILBERBERG		2214 48TH AVENUE			SAN FRANCISCO	CA	94116	
HELGA VON CZERNIEWICZ		672 SCRANTON AVENUE			EAST ROCKAWAY	NY	11518	
HELLEN DIXON		2711 WOODROW AVE			RICHMOND	VA	23222	
HELLENDER ENTERPRISES	DBA AMBASSADOR MAPS	7040 W PALMETTO PARK NO 4 PMB 205			BOCA RATON	FL	33433	
HELLER EHRMAN LLP	HELLER EHRMAN WHITE & MCAULIFFE	FILE NO 73536	PO BOX 60000		SAN FRANCISCO	CA	94160-3536	
HELLER EHRMAN WHITE & MCAULIFFE		333 BUSH ST STE 3000			SAN FRANCISCO	CA	94104	
HELLER EHRMAN WHITE & MCAULIFFE		FILE NO 73536	PO BOX 60000		SAN FRANCISCO	CA	94160-3536	
HELLER EHRMAN WHITE & MCAULIFFE		FILE NO 73536			SAN FRANCISCO	CA	94160-3536	
HELLER EHRMAN WHITE & MCAULIFFE	BERNARD L RUSSELL	333 BUSH ST			SAN FRANCISCO	CA	94104	
HELLER EHRMAN WHITE & MCAULIFFE	LEGAL DEPARTMENT	6100 COLUMBIA CENTER	701 FIFTH AVENUE		WA		98104	
HELLMUTH OBATA & KASSABAUM INC	HOK GROUP INC	PO BOX 200119			DALLAS	TX	75220-0119	
HELMING LEACH HERLONG	NEWMAN & ROUSE	PO BOX 2767			MOBILE	AL	36652	
HELP MINISTRIES	DBA DEBT FREE	PO BOX 22054			TEMPE	AZ	85285	
HELP MINISTRIES INC DBA		1148 W BASELINE RD			MESA	AZ	85210	
HELPING HAND HOUSE		PO BOX 710			PUYALLUP	WA	98371	
HELPING HANDS COMPUTER	OUTREACH INC	4080 FOREST VIEW DR			CONYERS	GA	30094	
HELPLINE YOUTH COUNSELING INC		12440 E FIRESTONE BLVD NO 1000			NORWALK	CA	90650	
HEMAR ROUSSO & HEALD LLP		15910 VENTURA BLVD 12TH FL			ENCINO	CA	91436-2829	
HEMET SAN JACINTO	ASSOCIATION OF REALTORS INC	146 S HARVARD ST			HEMET	CA	92543	
HEMISPHERE REAL ESTATE INC		1000 PONCE DE LEON BLVD NO 206			CORAL GABLES	FL	33134	
HEMLOCK PRINTERS USA INC		18000 INTERNATIONAL BLVD NO 404			SEATTLE	WA	98188	
HENDERSON CHAMBER OF COMMERCE		890 S BOULDER HWY			HENDERSON	NV	89015	
HENRIETTA A BEACH		1335 TOM FOWLER DR			TRACY	CA	95377	
HENRIETTA M CHAPMAN		3415 SILVER ARROW DR			LAKE HAVASU CITY	AZ	86406	
HENRY A HERNANDEZ		27460 GLENWOOD DR			MISSION VIEJO	CA	92692	
HENRY BROS ELECTRONIC INC	DBA HBE NATIONAL SAFE	1511 E ORANGECREEK PIPE AVE NO A			FULLERTON	CA	92631	
HENRY BUCEY		871 ASHIYA AVENUE			MONTEBELLO	CA	90640	
HENRY C WILLIAMS		104 VICTORIA WAY			CENTRAL POINT	OR	97502	
HENRY COUNTY TAX COMMISSIONER	ANDY PIPKIN	140 HENRY PKWY	PO BOX 488		MCDONOUGH	GA	30253	
HENRY DALEY CITY MARSHALL		1 CROSS ISLAND PLAZA			ROSELAND	CA	91142	
HENRY E HUNTINGTON	LIBRARY AND ART GALLERY	1151 OXFORD RD			SAN MARINO	CA	91108	
HENRY F SHIGLEY		17737 COUNTY ROAD 89			MENTONE	AL	35984	
HENRY GALLERY ASSOCIATION	UNIVERSITY OF WASHINGTON	PO BOX 351410			SEATTLE	WA	98195	
HENRY GUTERSON		PO BOX 11755			BAINBRIDGE ISLAND	WA	98110	
HENRY J BERENS		724 PROMENADE POINTE DR			ST AUGUSTINE	FL	32095	
HENRY JOHNSON AND PEARL JOHNSON	C O THE GIBSON LAW FIRM PLL	447 NORTH PARK DR			RIDGELAND	MS	39157	
HENRY LOU		1611 BLAZING STAR DR			HACIENDA HEIG	CA	91745	
HENRY OBERHEIM AND MARY CAMPION	FRANK P SAJAH LLC	251 N AVE W			WESTERFIELD	NJ	07090	
HENRY S KONG		6363 CHRISTIE AVENUE	NO 722		EMERYVILLE	CA	94608	
HENRY W GRADY FOUNDATION		50 HURT PLAZA NO 803			ATLANTA	GA	30303	
HERALD NEWS PUBLISHING INC	DBA FONTANA HERALD NEWS	PO BOX 549			FONTANA	CA	92334	
HERBERG INC	NORTHSTAR MORTGAGE & REALTY	950 BASCOM AVE NO 2112			SAN JOSE	CA	95128	
HERBERT D HELTZEL		3009 36TH AVE SW			SEATTLE	WA	98126	
HERBERT F FOX		11924 PRESWICK LANE			MUKILTEO	WA	98275	
HERBERT F FOX		11924 PRESWICK LN			MUKILTEO	WA	98275	
HERBERT GOTTLIEB		7 LAUREL AVE NO 308			KEANSBURG	NJ	07734	
HERBERT HEIMANN		PO BOX 371			MONTEREY	MA	01245	
HERBERT L BROWN		2428 N MARTIN L KING BLVD			NORTH LAS VEGAS	NV	89032	
HERBERT L REYNOLDS	WASHINGTON MUTUAL INC	1301 SECOND AVE			SEATTLE	WA	98101	
HERBERT R BURSON		102 FORD DRIVE			LA GRANGE	GA	30240	
HERBERT STOKELY		3 ARCHER DRIVE			STONY BROOK	NY	11790	
HERBERT TRABULSI		1015 TARPON COVE DRIVE	NO 102		NAPLES	FL	34110	
HERBERT W MERRILL	DBA MERRILL CONSULTANTS	10717 CROWWELL DR			DALLAS	TX	75228-5112	
HERBSIMA BET PERA		247 LAUREL GLEN CT			DANVILLE	CA	94506-1210	
HERITAGE CASUALTY INSURANCE CO		200 N MARTINGALE RD			SCHAUMBURG	IL	60173	
HERITAGE HEALTH & HOUSING INC		416 W 127TH ST			NEW YORK	NY	10027	
HERITAGE OPERATING LP	METROLIFT PROPANE	500 MEJER DR NO 200 20			FLORENCE	KY	41042	
HERMAN DEITERS		2017 CONEJO LN			FULLERTON	CA	92633	
HERMAN H CLAUSEN		23 WHITE TERRACE			RAMSEY	NJ	07446	
HERMAN MILLER	WORKPLACE RESOURCE	PO BOX 730823			DALLAS	TX	75373-0823	
HERMAN ZIMMERMAN		32039 DUNWANDRIN RD			GRAVOIS MILLS	MO	65037	
HERMANDAD MEXICANA		811 W CIVIC CENTER DR			SANTA ANA	CA	92701	
HERMES SARGENT BATES LLP		901 MAIN ST NO 5200			DALLAS	TX	75201	
HERMINE BREST		1822 W 248TH ST			LOMITA	CA	90717	
HERMINE JANCIK		2832 HARING STREET			BROOKLYN	NY	11235	
HERMINIA ARZATE		8581 CALLE FELIZ			RANCHO CUCAMONGA	CA	91730	
HERMINIA S GUANTO		417 S AVENIDA ALIPAZ			WALNUT	CA	91789	
HERRICK FEINSTEIN LLP		2 PARK AVE			NEW YORK	NY	10016	
HERSHEL PRICE	C O SHEEHAN BARNETT HAYS	DEAN & PENNINGTON PSC	114 S 4TH ST		DANVILLE	KY	40422	
HERTHA S GROTRIAN		22710 88TH AVE WEST			EDMONDS	WA	98026	
HERZOG CARP & MCMANUS PC		PO BOX 218645			HOUSTON	TX	77218-8845	
HESPERIA CHAMBER OF COMMERCE		16816 D MAIN ST			HESPERIA	CA	92545	

Exhibit C
Creditor Matrix Service List

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
MICHAEL A REYNOLDS		717 W CREMONA			SEATTLE	WA	98119	
MICHAEL A SIROTA		15229 SE 82ND COURT			NEWCASTLE	WA	98059	
MICHAEL ACOSTA		15846 GREEN HAVEN COURT			RAMONA	CA	92065	
MICHAEL B ANGELOVICH	C CARY PATTERSON	NIX PATTERSON & ROACH	2900 ST MICHAEL DRIVE5TH FLR		TEXARKANA	TX	75503	
MICHAEL B FLETCHER		14 MAIDEN LANE			NEW CITY	NY	10956	
MICHAEL B TOAL	WASHINGTON MUTUAL INC	1301 SECOND AVE			SEATTLE	WA	98101	
MICHAEL B ZARZANA		814 GOLDENROD STREET			PLACENTIA	CA	92870	
MICHAEL BIRMINGHAM		32302 TEMPE WAY			WESTLAKE VILL	CA	91361	
MICHAEL C HALL & FRANCISCO A GUTIERREZ	MC HALL & ASSOCIATES	605 MARKET STREET SUITE 900			SAN FRANCISCO	CA	94105	
MICHAEL CICHON		20111 SEPTO ST			CHATSWORTH	CA	91311-0000	
MICHAEL CLAWSON		30 GIRALDA WALK			LONG BEACH	CA	90803	
MICHAEL COMMISSIONG		3215 AVENUE H	APT 9 M		BROOKLYN	NY	11210	
MICHAEL COX	DBA MICHAEL E COX & ASSOCIATES	PO BOX 4908			BILOXI	MS	39535	
MICHAEL D ANDERSON	RONALD A GORRIE ANDERSON & ASSOCIATES	THE COMMONS SUITE 372	140 S LAKE AVENUE		PASADENA	CA	91101	
MICHAEL D FINE		131 S DEARBORN ST			CHICAGO	IL	60603	
MICHAEL D FRIEDMAN		3 SOUTH PARK COURT			HOLMDEL	NJ	07733	
MICHAEL D GALLAGHER		42143 NORTH DELANY RD			ZION	IL	60099	
MICHAEL D HALSTATER		8212 CHIMINEAS AVENUE			RESEDA	CA	91335	
MICHAEL D MEIGHAN		3432 96TH AVENUE NE			CLYDE HILL	WA	98004	
MICHAEL D MEIGHAN		3432 96TH AVENUE NE			CLYDE HILL	WA	98004	
MICHAEL D MINERMAN	WASHINGTON MUTUAL INC	1301 SECOND AVE			SEATTLE	WA	98101	
MICHAEL D WEARNE		7754 JONES AVE NW			SEATTLE	WA	98117	
MICHAEL DAY		60 MONTEREY DRIVE			TIBUTON	CA	94920	
MICHAEL DILWORTH		6275 MACQUARLE ST			SYDNEY	NSW 20000	AUSTRALIA	
MICHAEL DOAN APC		2850 PICO PICO DR NO D			CARLSBAD	CA	92008	
MICHAEL DUNBAR	BANKRUPTCY ESTATE JEREMY BANKS	TRUSTEE NO 08 01542	531 COMMERCIAL ST NO 500		WATERLOO	IA	50701	
MICHAEL E ENOW	ENOW & ASSOCIATES APLC	234 LOYOLA AVENUE SUITE 1010			NEW ORLEANS	LA	70112	
MICHAEL E ENOW	ENOW & ASSOCIATES APLC	234 LOYOLA AVENUE SUITE 1010			NEW ORLEANS	LA	70112	
MICHAEL E HUBER	8170 SOUTH HIGHLAND DRIVE	SUITE E5			SANDY	UT	84093	
MICHAEL E HUBER	MICHAEL E HUBER LAW OFFICES	8170 S HIGHLAND DRIVE STE E5			SANDY	UT	84093	
MICHAEL F COSSGROVE ROBERT J TRIOZZI & GARY S SINGLETARY	CITY OF CLEVELAND DEPARTMENT OF LAW	601 LAKESIDE AVENUE STE 106			CLEVELAND	OH	44114	
MICHAEL F FAGEN		11153 E DALE LANE			SCOTTSDALE	AZ	85262	
MICHAEL F SANTIMAURO		125 PHILIP AVENUE			ELMWOOD PARK	NJ	07407	
MICHAEL F YADACH		PO BOX 3626			GRANDMA HILLS	CA	91394	
MICHAEL G FONDS		502 S PRESIDENT ST			JACKSON	MS	39201	
MICHAEL GALLAGHER	WASHINGTON MUTUAL INC	1301 SECOND AVE			SEATTLE	WA	98101	
MICHAEL GARCIA	ROBERT F KANE TRUST ACCOUNT	870 MARKET ST NO 1128			SAN FRANCISCO	CA	94102	
MICHAEL H DUJAN		1613 E VILLA THERESA DR			PHOENIX	AZ	85022	
MICHAEL HELLAND	ALL EUROPEAN APPLIANCE REPAIR	257 ANDOVER ST			SAN FRANCISCO	CA	94110	
MICHAEL I HUANG		3442 SUMMER BAY DRIVE			SUGAR LAND	TX	77478	
MICHAEL I STRAUSS		33 GAYNOR PLACE			GLEN ROCK	NJ	7452	
MICHAEL I CHAMOWITZ AND	RUTH L CHAMOWITZ	118 N ALFRED ST			ALEXANDRIA	VA	22314	
MICHAEL J CIMINO		C MARIA MILLER			MASSAPEQUA	NY	11758	
MICHAEL J DAVIS	DAVIS LAW LLC	524 TACOMA AVE S	24 GAIL DR		TACOMA	WA	98402	
MICHAEL J GIAMPAOLO		2238 N SAN MIGUEL DR			ORANGE	CA	92867	
MICHAEL J KUCEY		109 CHICKERING PKWY			ROSWELL	GA	30075	
MICHAEL J KUCEY		109 CHICKERING WAY			ROSWELL	GA	30075	
MICHAEL J PEMBERTON		963 OLD NEVADA WAY			GARDNERVILLE	NY	89460	
MICHAEL J PROCOPIO								
MICHAEL J SPARANESI		34 GARDEN RD			HARRISON	NY	10528-2304	
MICHAEL K CHO		9924 RAVENNA WAY			CYPRUSS	CA	90630	
MICHAEL K MURPHY		716 MISSION CREEK DR			PALM DESERT	CA	92211	
MICHAEL K MURPHY		1301 SECOND AVE			SEATTLE	WA	98101	
MICHAEL K MURPHY	WASHINGTON MUTUAL LEGAL DEPT	1301 2ND AVE WMC3501			SEATTLE	WA	98101	
MICHAEL KMURPHY		1301 SECOND AVE			SEATTLE	WA	98101	
MICHAEL KOVACEVICH	WASHINGTON MUTUAL INC	1301 SECOND AVE			SEATTLE	WA	98101	
MICHAEL L ALLISON		2250 82ND AVENUE SE			MERCER ISLAND	WA	98040	
MICHAEL L PARKER		5476 W 32ND PLACE			FERNDALE	WA	98248	
MICHAEL L SHERO	DBA THE GREEN THUMB	3104 161ST AVE SE			BELLEVUE	WA	98008	
MICHAEL L STAFFORD	WASHINGTON MUTUAL INC	1301 SECOND AVE			SEATTLE	WA	98101	
MICHAEL L STAFFORD	WASHINGTON MUTUAL INC	1301 SECOND AVE			SEATTLE	WA	98101	
MICHAEL L VALDEZ		181 LEAHY CIRCLE SO			DES PLAINES	IL	60016	
MICHAEL LANZO TRUSTEE		PO BOX 43			CALDWELL	NJ	07006	
MICHAEL LAPSLEY DBA	BIG BOYS MOVING	PO BOX 1201			LAKE ELSINORE	CA	92531	
MICHAEL LAUBSTED		148 VIA SERENA			ALAMO	CA	94507	
MICHAEL LAW	MCL GRIP & LIGHTING SERVICES	PO BOX 2801			SEAL BEACH	CA	90740-1801	
MICHAEL MARSH		3434 14TH AVENUE W			SEATTLE	WA	98119	
MICHAEL MATZA		1215 269 AVE SE			SAMMAMISH	WA	98075	
MICHAEL MC GEEVER		300 ERIK DRIVE			SETAUKET	NY	11733	
MICHAEL MCCALL		2795 HOLLISTON AVE			ALTADENA	CA	91001-2043	
MICHAEL MCGARVEY		21110 SE 200TH			RENTON	WA	98058	
MICHAEL MEIGHAN		3432 96TH AVENUE NE			CLYDE HILL	WA	98004	
MICHAEL MILLER		120 S GREENRIDGE DRIVE			LIBERTY LAKE	WA	99019	
MICHAEL MINERMAN	WASHINGTON MUTUAL INC	1301 SECOND AVE			SEATTLE	WA	98101	
MICHAEL MOORE		3851 CALLE DEL ESTABLO			SAN CLEMENTE	CA	92672	
MICHAEL MOORE		269 ANDERSON ST			SAN FRANCISCO	CA	94110	
MICHAEL MORNEAULT		14945 SW BROOKLET PL			TIGARD	OR	97224-0835	
MICHAEL MURPHY		5420 S QUAIL RIDGE CIRCLE			SPOKANE	WA	99223	
MICHAEL N CASSIDY		SOUTHBROOK CONDOMINIUM	1541 EL CAMINO RD NO 4		JACKSONVILLE	FL	32216	
MICHAEL P BRUN		3992 MYRA AVE			LOS ALAMITOS	CA	90720	
MICHAEL P BUDNEY		364 OAK HILL RD			FITCHBURG	MA	01420	
MICHAEL P MIZUMOTO TRUSTEE		160 SW 320TH ST			FEDERAL WAY	WA	98023-4707	
MICHAEL P O BRIEN		1029 N WOLCOTT B			CHICAGO	IL	60622	
MICHAEL PALERMO		4 LAUREL STREET			FLORAL PARK	NY	11001	
MICHAEL PIERCE		PO BOX 81	15 JEWELL ST		CORNWALL	CT	06753	
MICHAEL PROVENZANO		19030 8 HAMLIN ST			RESEDA	CA	91335	
MICHAEL R DALY		4266 EXULTANT DR			RANCHO PALOS VERDES	CA	90275	
MICHAEL R PETERSON		424 CANYON VISTA DR			THOUSAND OAKS	CA	91320	
MICHAEL R WEBSTER		323 TAHOS RD			ORINDA	CA	94563	
MICHAEL R ZARRO		4735 225TH AVE SE			SAMMAMISH	WA	98075	
MICHAEL RAPAPORT		744 DUNCAN STREET			SAN FRANCISCO	CA	94131	
MICHAEL S FLOTLIN		13899 SE 64TH			BELLEVUE	WA	98006	
MICHAEL S PADILLA		382 MARINA PARK LN			LONG BEACH	CA	90803	
MICHAEL S SOLENDER		6 SPRUCE LANE			SCARSDALE	NY	10583	
MICHAEL S SOLENDER		1301 SECOND AVE			SEATTLE	WA	98101	
MICHAEL S SOLENDER	WASHINGTON MUTUAL INC	HUMAN RESOURCES DEPARTMENT	1301 2ND AVENUE		SEATTLE	WA	98101	
MICHAEL SANTOLI		51 STONE AVENUE			NORTH BABYLON	NY	11703	
MICHAEL SCOTT BLOMQUIST		18234 DAVES AVENUE			LOS GATOS	CA	95030	