

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
WASHINGTON MUTUAL, INC., <i>et al.</i> , <sup>1</sup>	)	Case No.: 08-12229 (MFW)
	)	(Jointly Administered)
	)	
	)	Re: Docket Nos. 11212, 11213 & 11217
Debtors.	)	Hearing Date: May 23, 2013 at 10:30 a.m.
	)	
	)	

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**JOINT REPLY OF PROVIDIAN EMPLOYEE CLAIMANTS TO WMI LIQUIDATING TRUST’S LIMITED OMNIBUS OPPOSITION TO MOTIONS TO AMEND**

Claimants Michele Grau-Iversen, Stephen Whittaker, David Tomlinson, Robert Hill, Michael Rapaport, Mary Beth Davis, Anthony Vuoto, Richard Strauch, Laura Rogers-Rodrigues, Luis Rodriguez, Robert Boxberger, Kathy Yeu, Robert Merritt, John Webber, Daniel Shanks and Jose’ Tagunicar (each a “Claimant” and collectively “Claimants”), hereby submit this reply in response to WMI Liquidating Trust’s Limited Omnibus Objection To Certain Employee Claimants’ Motions to Amend [D.I. 11240] (the “Opposition”).

WMILT’s Opposition breaks down into three (3) distinct positions, specifically (i) amendments that WMILT does not oppose (the “Unopposed Amendments”), (ii) amendments that WMILT claims it has insufficient information to determine whether or not will oppose the Amendment (the “Corrected Amount Amendments”, and (iii) amendments that WMILT opposes (the “Providian/SERAP/ETRIIP Claims”).

In it Opposition, WMILT argues that the Providian/SERAP/ETRIIP Claims constitute “new claims” and not claim amendments, and therefore do not relate back to the original claims. (See, Opposition at ¶45.) WMILT further argues, alternatively, that the

<sup>1</sup> The Debtors in this Chapter 11 case are Washington Mutual, Inc. and WMI Investment Corp.



Providian/SERAP/ETRIP Claims should be denied “because the balance of equities weighs in WMILT’s favor and against permitting the amendments.” (Id.) In addition, WMILT objects to the reinstatement of Claimant Vuoto’s SERAP Claim (Claim No. 159) on the grounds that he “does not state a valid basis to reinstate his claim.” (See, Opposition at ¶47.)

Contrary to the contentions of WMILT, the Motions to Amend [D.I. 11212, 11213 & 11217] (the “Motions”) should be granted because (i) the inclusion of the Providian/SERAP/ETRIP Claims arise directly from Claimants’ employment with WaMu, directly relate to their Original Claims and are indeed appropriate amendments that satisfy all of the *Foman* factors; (ii) WMILT will suffer absolutely no prejudice by the inclusion of the Providian/SERAP/ETRIP Claims; (iii) the equities weigh in favor of Claimants in permitting the amendments; and, (iv) to the extent it is determined that the Providian/SERAP/ETRIP Claims are actually “New Claims,” as WMILT contends, then the Providian/SERAP/ETRIP Claims should be allowed as Claimants satisfy the excusable neglect standard set forth in *Pioneer Investment Services Co. v. Brunswick Associates*, 507 U.S. 380 (1993).

Based on the Motions, this Reply and the record before this Court, the Motions should be granted in their entirety and Claimants should be permitted to file their Amended Proofs of Claim, copies of which are attached hereto as Exhibits “1” through “22” and have them relate back to the timely filed Claims. In addition, Claimant Vuoto’s Claim No. 159 for SERAP benefits should be reinstated. Claimants do not oppose WMILT’s request to file renewed omnibus objections provided that any additional objections address only the amended portions of the Amended Proofs of Claim. The same restriction should also apply with respect to any additional adversary proceedings or claims WMILT intends to pursue -- such additional adversary proceedings should only address the amended portion of the Amended Proofs of

Claim. WMILT should not be permitted to raise new objections and claims for relief with respect to the entirety of the Amended Proofs of Claim without seeking Court approval.

**REPLY TO LIMITED OPPOSITION**

1. WMILT does not oppose the proposed amended claims of Claimants Tagunicar, Shanks, Webber and Merritt, which now include a claim for attorneys' fees, costs and expenses pursuant to the Providian Agreement.<sup>2</sup> (See, Opposition at ¶44.) These amended claims should be permitted.

2. Similarly, WMILT does not oppose the proposed amended claims of Claimants Grau-Iversen, Whittaker, Hill, Tomlinson, Davis, Vuoto, Rogers-Rodrigues, Strauch and Rodrigues to the extent the amendments assert alternate recovery theories under the WaMu Severance Plan and the WaMu Executive Officer Severance Plan. (Id.) These amendments should likewise be permitted.

3. The proposed amended proofs of claim for all Claimants are as set forth below and as attached hereto. This should resolve any claim of "lack of information" regarding the Corrected Amount Amendments, and these amendments should be permitted.

4. WMILT opposes the amendments only as to the Providian/SERAP/ETRIP Claims. As set forth in the Motions and herein, the Providian/SERAP/ETRIP Claims directly arise from each Claimant's employment relationship and are directly related to their Original Claims. They should be permitted and should relate back to the filing of the Original Claims.

5. The proposed amendments would revise the amounts in the Original Claims as follows:

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<sup>2</sup> Although not expressly stated in the Opposition, WMILT presumably also does not oppose the other Claimants' requests to include attorneys' fees, costs and expenses in their amended proofs of claim.

<i>Claimant</i>	<i>Claim no.</i>	<i>Original Claim Amount</i>	<i>Amended Claim Amount</i>	<i>Exhibit No.</i>
Tagunicar	2367	\$343,545.77	\$343,545.77 Plus Attorneys' Fees Costs & Expenses	1
Shanks	2360	\$222,734.58	\$222,734.58 Plus Attorneys' Fees Costs & Expenses	2
Webber	2348	\$885,141.66	\$885,141.66 Plus Attorneys' Fees Costs & Expenses	3
Merritt	2351	\$319,049.12	\$319,049.12 Plus Attorneys' Fees Costs & Expenses	4
Boxberger	2363	\$1,093,615.99	\$1,093,615.99 Plus SERAP Balance, Attorneys' Fees Costs & Expenses	5
Rogers-Rodrigues	2673	\$1,174,150.70	\$1,229,291.70 Plus Attorneys' Fees Costs & Expenses	6
Strauch	2420	\$2,668,335.73	\$2,807,399.91 Plus Attorneys' Fees Costs & Expenses	7
Rodriguez	2149	\$1,105,130.50	\$1,156,030.88 Plus Attorneys' Fees Costs & Expenses	8
Yeu	2354	\$1,338,225.18	\$1,330,957.10 Plus Attorneys' Fees Costs & Expenses	9
Grau-Iversen	117	\$9,651.66	\$28,954.97 Plus Attorneys' Fees Costs & Expenses	10
Grau-Iversen	610	\$221,000	\$990,961.73 Plus Attorneys' Fees Costs & Expenses	11
Grau-Iversen	613	\$1,486,352.00	\$1,820,350.00 Plus Attorneys' Fees Costs & Expenses	12
Grau-Iversen	617	\$100,000.00	452,999.00 Plus Attorneys' Fees Costs & Expenses	13

<i>Claimant</i>	<i>Claim no.</i>	<i>Original Claim Amount</i>	<i>Amended Claim Amount</i>	<i>Exhibit No.</i>
Hill	636	\$1,103,250.00	\$3,095,217.26 Plus SERAP Balance, Attorneys' Fees Costs & Expenses	14
Rapaport	629	\$292,742.00	\$1,937,692.56 Plus Attorneys' Fees Costs & Expenses	15
Tomlinson	1390	\$1,815,402.65	\$3,191,342.68 Plus Attorneys' Fees Costs & Expenses	16
Davis	844	\$915,958.00	\$2,788,406.27 Plus Attorneys' Fees Costs & Expenses	17
Whittaker	2832	\$1,185,852.00	\$1,624,098.00 Plus Attorneys' Fees Costs & Expenses	18
Whittaker	3457	\$8,122.72	\$24,368.16 Plus Attorneys' Fees Costs & Expenses	19
Whittaker	3458	\$1,233,000.00	\$1,918,717.95 Plus Attorneys' Fees Costs & Expenses	20
Whittaker	3459	\$155,325.00	\$477,999.00 Plus Attorneys' Fees Costs & Expenses	21
Vuoto	997	\$3,538,629.00	\$4,073,449.53 Plus Attorneys' Fees Costs & Expenses	22

### **I. The Amendments Should be Permitted**

6. It is well established that amendments to proofs of claim are liberally allowed. *In re Orion Ref Corp.*, 317 B.R. 660, 664 (Bankr. D. Del. 2004). Rule 15 provides that “[t]he court should freely give leave when justice so requires.” Courts have a long established liberal policy that permits amendments to a proof of claim. See Bankr.R. 7015; Fed.R.Civ.P. 15; *In re Franciscan Vineyards, Inc.*, 597 F.2d 181, 182 (9th Cir., 1979), cert. denied, 445 U.S. 915, 100 S.Ct. 1274, 63 L.Ed.2d 598 (1980). The crucial inquiry is whether the opposing party would be

unduly prejudiced by the amendment. *In re Wilson*, 96 B.R. 257, 263 (9th Cir.BAP1988); *United States v. Hougham*, 364 U.S. 310, 316 (1960). In this case, WMILT will suffer no prejudice if the Motion is granted.

7. At this time, there is no Hearing Date scheduled for the presentation of the employee claims. Deposition discovery has not yet commenced, and the mediation has been postponed. There is presently a stay in place on first-party discovery. In light of the procedural posture of the case, there would be no prejudice to WMILT should the Claimants be permitted to amend their claims.

8. As set forth in the Motions, the *Foman* factors have been satisfied with respect to the proposed Amended Claims. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

9. In its opposition, WMILT asserts that that the requested amendments of Claimants Grau-Iversen, Hill, Tomlinson, Davis and Whittaker pursuant to the Providian Agreements would be disruptive because they are “New Claims”<sup>3</sup> and that “WMILT was not aware of [these] when it filed the Omnibus Objections.”<sup>4</sup> These statements are disingenuous. WMILT was fully aware of, and in fact specifically objected to, the claims of Grau-Iversen, Whitaker, Hill and Davis in the 80<sup>th</sup> Omnibus Objection as being “Providian” claims.<sup>5</sup> (See, D.I. 10505 and Exhibits B, C and D thereto).<sup>6</sup>

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<sup>3</sup> See, Opposition at ¶45.

<sup>4</sup> See, Opposition at ¶62.

<sup>5</sup> WMILT objected to Tomlinson’s claim under its 79<sup>th</sup> Omnibus Objection and did not acknowledge his status as a holder of a Providian Agreement. His Providian Agreement, however, is directly tied to his employment relationship and his entitlement to wages and benefits from Washington Mutual. His claim under the Providian Agreement was clearly detailed in his Response to the 79<sup>th</sup> Omnibus Objection [See, D.I. 10633].

<sup>6</sup> WMILT refers to these as the “Alternate Providian Claims.” See, Opposition at ¶34. However, as the attached proposed Amended Proofs of Claim reflect, only a portion of the rights under the Providian Agreement are “alternate” rights. Claimants are contractually entitled to unpaid wages under the Providian Agreement through 2007 regardless of whether the August 7, 2008 Special Bonus Opportunity supersedes the Providian Agreement.

10. With respect to the requested amendments for SERAP benefits, WMILT does not appear to oppose the amendments with respect to Claimants Davis, Rapaport, Tomlinson or Strauch. (See, Opposition at ¶38.) However, WMILT appears to take a contrary position with respect to Claimants Grau-Iversen, Whittaker, Vuoto, Hill, Boxberger and Yeu, and argues that these SERAP/ETRIP claims are either (i) already resolved or (ii) not previously raised. (See, Opposition at ¶¶39-41.) In the Motions, these Claimants clearly established that the reason Claimants now seek amendment of the SERAP claims stems directly from WMI's own conduct in misstating the vested balances to these Claimants. WMILT fails to provide any reasonable excuse for its conduct in its Opposition that could justify its position on the SERAP claims.<sup>7</sup>

11. The Original Claims filed by the Claimants provided WMI and WMILT fair notice of the conduct, transaction and occurrence that form the basis for Claimants' Amended Claims. Specifically, the Original Claims provided WMI and WMILT with notice that Claimants intend to pursue any and all claims related to their employment with WaMu.

12. As discussed in the Motion, a similar set of facts was decided by the Bankruptcy Court in Illinois in *In re Xechem International, Inc.*, 424 B.R. 836 (Bankr. N.D. Ill. 2010). In that case, a former employee of the debtor filed a timely claim for unpaid compensation. After the bar date, the former employee sought to amend his claim to include additional claims for severance compensation, indemnification, repayment of a loan to the company and interest on the loan. The Court allowed the employee to amend the claim as to those claims arising from the employee's employment with the company but would not allow the amendment of the claim as to the non-employment claims finding that those claims did not arise out of the employee's

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<sup>7</sup> WMI, in its capacity as Plan Sponsor of the SERAP, made the misrepresentations to the Participants in March 2011 regarding their vesting percentage and balances under the terms of the SERAP. (See, Exhibit 8 to D.I. 11212.) The participants should be entitled to rely on these representations. WMILT attempts to take advantage of its own mis-statements to the Claimants by arguing that WMILT either (i) already resolved these claims or (ii) never had the opportunity to assess the validity or lodge an objection to these claims. (Id.)

employment. Id. Here, the Claimants seek only to amend the Claims to include compensation due to them from their employment with WaMu. Their requested amendments should be permitted.

**II. Vuoto's Claim No. 159 Should be Reinstated**

13. WMILT dedicates five (5) pages of its Opposition to its argument that Claimant Vuoto's Claim No. 159 should not be reinstated, on the asserted basis that "Vuoto has offered no excuse for his failure to respond to the Fifty-Second Omnibus Objection." (See Opposition at ¶¶71-76.). Yet in footnote 9 on page 31 of the Opposition, WMILT specifically acknowledges Vuoto's basis for reinstatement, namely that he was specifically misled by WMI. Nowhere in the Opposition does WMILT deny the facts asserted by Vuoto in his Motion to Amend. Rather, WMILT cites various legal authority and draws the bald-faced conclusion that Mr. Vuoto has not met his burden.

14. By misleading Vuoto (by representing to him that he had no vested balance in the SERAP) and subsequently misleading this Court (by failing to lodge the Amendment No. 1 to SERAP along with the Fifty-Second Omnibus Objection), WMI's own misconduct is the justification for why Vuoto did not respond. To allow WMILT to benefit from this type of conduct would not serve the equities of the case. Vuoto's Claim No. 159 should be reinstated.

**CONCLUSION**

15. Based on the foregoing and as set forth in the Motions, Claimants request that this Court allow them to file the Amended Claims, as attached hereto, and have them relate back to the timely filed Original Claims.

16. Alternatively, if the Court denies the Claimants' Motions, the Court should find that excusable neglect permits the assertion of claims based upon the WaMu Severance Plan, the



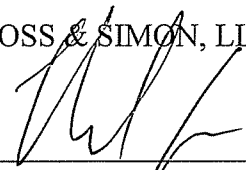
WaMu Executive Officer Severance Plan, the SERAP, the ETRIP and the restatement of contractual benefits under the CIC Agreement and the Providian Agreement.

17. Claimants also request that to the extent WMILT is permitted to file new objections to the Amended Claims, such new objections should be limited to the amended portions of the Amended Claims, and that such limitations should also apply to any additional claims for relief WMILT may seek to pursue. In other words, without leave from this Court, WMILT's new objections and new claims for relief should be limited to the amended portions of the Amended Claims.

Dated: May 17, 2013  
Wilmington, Delaware

CROSS & SIMON, LLC

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

  
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# Exhibit 1



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

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

If the documents are not available, please explain:

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

**DEFINITIONS****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**INFORMATION****Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant: José O.N. Tagunicar**

**Social Security No.: XXX-XX-1675**

**ATTACHMENT A – Proof of Claim**

José O.N. Tagunicar (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant was continuously employed by Washington Mutual up through and including his termination date of May 15, 2006. A table summarizing the calculations supporting Claimant’s total claim of **\$343,545.77, plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**CLAIMS BASED ON RIGHTS VESTING PRIOR TO SEPTEMBER 26, 2008**

**Claim 1. Vested Rights To Unpaid Bonus Wages Under The Providian Agreement**

In 2004, prior to the Providian-Washington Mutual Merger, Providian offered the Claimant and other key executives a Change of Control Employment Agreement (“**Providian Agreement**”) to provide job security and financial incentives to remain with the company in the event of corporate acquisition.<sup>1</sup> The Providian Agreement was signed on July 15, 2004, and the employment terms became effective at the time Washington Mutual acquired Providian on or about October 1, 2005.

Claimant is entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. that is commensurate with the value of Claimant’s bonus wages that were vested and unpaid prior to September 26, 2008, under Section 4(b)(ii) of the Providian Agreement. The section provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

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Arriving at the amount due Claimant is simply a matter of applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received the following total bonus amount:

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<sup>1</sup> See **Exhibit A**.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant: José O.N. Tagunicar**

**Social Security No.: XXX-XX-1675**

<u>January 2005 Bonus Amount<sup>2</sup></u>	<u>Calculation</u>
Cash	\$ 80,000.00
Stock Options	\$ 78,474.00
Restricted Stock	\$ 44,617.50
<b>Cash Bonus Total</b>	<b>\$203,091.50</b>

In calculating Claimant's annual cash bonus after the merger, Washington Mutual erred by failing to include the value of the equity previously awarded to Claimant. When the value of the equity award is properly included in the calculation, Claimant's guaranteed annual cash bonus under the Providian Agreement totals \$ 203,091.50. The amounts due to Claimant under the paragraphs quoted above yield the figures below, which are contrasted to the amounts Washington Mutual actually paid Claimant at the time of payment of the annual bonuses. Washington Mutual's calculation error resulted in the following underpayment of bonus wages \$ **103,091.50** as detailed below.

<u>Obligations Under Section 4(b)(ii) of the Providian Agreement</u>	<u>Amount Paid By WAMU</u>	<u>Actual Entitlement Per Section 4(b)(ii)</u>	<u>Unpaid Bonus Wage Balance</u>
<i>Annual Bonus for 2005 (as paid in Jan. 2006)</i>	\$100,000.00	\$204,091.50	\$103,091.50
<b>SUBTOTAL</b>			<b>\$103,091.50</b>

### **Claim 2. Termination Benefits Payment Pursuant To The Providian Agreement**

The Providian Agreement had a three-year term commencing on October 1, 2005 (when Washington Mutual acquired Providian) and was in effect on May 15, 2006, when claimant was terminated. The Providian Agreement contains a severance provision which was triggered as of May 15, 2006. Claimant terminated his employment with Washington Mutual for Good Reason, triggering the vesting of the severance payment rights to Claimant. However, Washington Mutual miscalculated the amount owed to Claimant and underpaid him as set forth below.

<sup>2</sup> See Exhibit B.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant: José O.N. Tagunicar**

**Social Security No.: XXX-XX-1675**

Claimant is entitled to and hereby claims a pro rata share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. that is commensurate with the value of Claimant's severance benefits under Section 6(a) of the Providian Agreement, which provides in pertinent part:

**Section 6(a): Obligations of the Corporation upon Termination:** If during the Employment Period, the Corporation ... shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Corporation shall pay to the Executive a lump sum in cash within 30 days of the Date of Termination the aggregate of the following amounts:

A. the sum of (1) the Executive's Base Salary through the Date of Termination, (2) the product of (x) the Annual Bonus and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365, and (3) any compensation previously deferred by the Executive under non-qualified plans ... and the value of any unused paid time off ... (the "Accrued Obligations"), and

B. the amount equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage [defined in this paragraph]. ..., and

C. a separate lump-sum payment equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage and (3) the Retirement Contribution Percentage [defined]. . .

\*\*\*

The amount due Claimant is calculated by applying his/her individual financial data to the formulae specified in the Providian Agreement and calculating the result. Briefly summarized, the amounts due to Claimant under the paragraphs quoted above yields the following figures:



Debtor: Washington Mutual, Inc. 08-12229 (MFW)

Claimant: José O.N. Tagunicar

Social Security No.: XXX-XX-1675

<b><u>Obligations Under Section 6(a)(i)(A) of the Providian Agreement</u></b>	<b><u>Amount Paid By WAMU<sup>3</sup></u></b>	<b><u>Actual Entitlement Per Section 6(a)(i)(A)</u></b>	<b><u>Unpaid Prorated Bonus Wage Balance</u></b>
<b>Prorated Annual Bonus for 2006 (annual bonus (\$203,091.50) x percent of year employed (132/365 or 36.16% ))</b>	<b>\$ 28,931.51</b>	<b>\$ 73,437.89</b>	<b>\$ 44,506.38</b>
<b>SUBTOTAL</b>			<b>\$44,506.38</b>
<b>Severance Due = One Year Bonus + One Year Salary</b>	<b>Amount Paid By WAMU</b>	<b>Actual Entitlement Per Section 6(a)(i)</b>	<b>Unpaid Severance Balance</b>
<i>1x [Sec. 6(a)(i)(B) calculation is the number 1 x (the sum of below)]</i>			
<b>Annual Base Salary</b>	<b>\$ 200,000.00</b>	<b>\$ 200,000.00</b>	<b>\$0</b>
<b>+</b>			
<b>Annual Base Salary x Bonus Percentage*</b>	<b>\$ 80,000.00</b>	<b>\$ 203,091.50</b>	<b>\$ 123,091.50</b>
<i>* Bonus percentage equals 101.55 % [Percentage calculated under Section 6(a)(i)(B) of the Providian Agreement by dividing highest pre-merger bonus (\$ 203,091.50 in 2005) by highest pre-merger salary (\$ 200,000.00 in 2005)]</i>			
<b>Subtotal</b>	<b>\$280,000.00</b>	<b>\$403,091.50</b>	<b>\$123,091.50</b>

<sup>3</sup> See Exhibit C.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant: José O.N. Tagunicar**

**Social Security No.: XXX-XX-1675**

	<b><u>Retirement Contribution</u></b> <i>[Sec. 6(a)(i)(C) calculation is the number 1 x (the sum of below)]</i>	<b><u>Amount Paid By WAMU</u></b>	<b><u>Actual Entitlement Per Section 6(a)(i)</u></b>	<b><u>Unpaid Retirement Contribution Balance</u></b>
1x	<b>Annual Base Salary</b>	<b>\$200,000.00</b>	<b>\$200,000.00</b>	<b>\$0</b>
+	<b>Annual Base Salary x Bonus Percentage**</b> <i>Bonus percentage equals 101.55 %</i>	<b>\$ 80,000.00</b>	<b>\$203,091.50</b>	<b>\$ 123,091.50</b>
X	<b>Retirement Percentage**</b> <i>Retirement percentage equals 4.00 % [**Retirement percentage as reported by Washington Mutual to other terminating employees as the highest in the three years prior to the merger Effective Date]</i>	<b>4.00%</b>	<b>4.00%</b>	
<b>Subtotal</b>		<b>\$11,200.00</b>	<b>\$16,123.66</b>	<b>\$ 4,923.66</b>
<b>Total Termination Benefits Subtotal</b>				<b>\$ 172,521.54</b>

**Claim 3. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages And Unpaid Termination Benefits Under The Providian Agreement**

As set forth above, Washington Mutual underpaid Claimant’s bonus wages for the 2005 performance years and underpaid his termination benefit entitlement at the time of termination. Under Section 8 of the Providian Agreement, Claimant was entitled to interest at the applicable federal rate (“AFR”) on these unpaid balances. This section provides:

**Section 8: Full Settlement.** ... The Corporation agrees to pay, to the full extent permitted by law, ... in each case interest, on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended ...

Therefore, Claimant had a vested right to interest on the unpaid bonus wages prior to September 26, 2008, as outlined below:

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant: José O.N. Tagunicar**

**Social Security No.: XXX-XX-1675**

<b><i>Unpaid Portion of 2005 Bonus Payable Jan 2006</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jany. 2006 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi-Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed Total Bonus Payments</i></b>  <i>[calculated from Jan. 2006 through Sept. 26, 2008 only]</i>
<b>\$ 103,091.50</b>	<b>2.667 Years</b>	<b>4.68%</b>	<b>\$13,535.31</b>
<b><i>Unpaid Portion of Termination Benefits Payable May 2006</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[May. 2006 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi-Annually</i></b>	<b><i>Unpaid Interest On The Accrued Delayed Total Bonus and Severance Payments</i></b>  <i>[calculated from May 15, 2006 through Sept. 26, 2008 only]</i>
<b>\$ 172,521.54</b>	<b>2.333 Years</b>	<b>4.94%</b>	<b>\$20,806.46</b>
<b><i>Subtotal</i></b>			<b>\$ 34,341.77</b>

**Claim 4. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement**

Because Washington Mutual failed to pay, in full, the bonus wages that claimant was entitled to under the Providian Agreement (as detailed above), Claimant had a vested right, prior to September 26, 2008, to a wage penalty equal to 30 days wages pursuant to Labor Code Sections 1201 and 1203. This wage penalty is equal to **\$33,590.96**[(Annual salary of \$200,000 + Annual bonus of \$203,091.50 divided by 360 days) x 30 days].

**Claim 5. Recovery of Attorneys' Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys' fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (***regardless of the outcome***). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys' fees and expenses in costs in connection with the monies owed to him under the Providian Agreement, the Claim, the bankruptcy process, the Plan confirmation, and the Objection. All of these fees and expenses have been necessarily incurred

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant: José O.N. Tagunicar**

**Social Security No.: XXX-XX-1675**

in good faith to defend Claimant's rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Attorneys' fees, costs and expenses are also recoverable under Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys' fees, costs and expenses, in an amount according to proof.

**Total Claim Value Chart**

<b>Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 103,091.50</b>
<b>Claim 2. Termination Benefits Payment Pursuant to the Providian Agreement</b>	<b>\$ 172,521.54</b>
<b>Claim 3. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement</b>	<b>\$ 34,341.77</b>
<b>Claim 4. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 33,590.96</b>
<b>Claim 5. Attorneys' Fees, Costs and Expenses</b>	<b>According to Proof</b>

**TOTAL CLAIM VALUE**

**\$343,545.77  
Plus Attorneys' Fees,  
Costs & Expenses**

# Exhibit 2



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

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

If the documents are not available, please explain:

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

**DEFINITIONS****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**INFORMATION****Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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



**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Daniel Shanks**

**Social Security No.: XXX-XX-4685**

**ATTACHMENT A – Proof of Claim**

Daniel Shanks (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant was continuously employed by Washington Mutual up through his termination date of October 13, 2006. A table summarizing the calculations supporting Claimant’s total claim of **\$222,734.58, plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**CLAIMS BASED ON RIGHTS VESTING PRIOR TO SEPTEMBER 26, 2008**

**Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement**

In 2004, prior to the Providian-Washington Mutual Merger, Providian offered the Claimant and other key executives a Change of Control Employment Agreement (“**Providian Agreement**”) to provide job security and financial incentives to remain with the company in the event of corporate acquisition.<sup>1</sup> The Providian Agreement was signed on July 15, 2004, and the employment terms became effective at the time Washington Mutual acquired Providian on or about October 1, 2005.

Claimant is entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. that is commensurate with the value of Claimant’s bonus wages that were vested and unpaid prior to September 26, 2008, under Section 4(b)(ii) of the Providian Agreement. The section provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

\*\*\*

Arriving at the amount due Claimant is simply a matter of applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received the following total bonus amount:

---

<sup>1</sup> See **Exhibit A**.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Daniel Shanks**

**Social Security No.: XXX-XX-4685**

<u>January 2005 Bonus Amount<sup>2</sup></u>	<u>Calculation</u>
Cash	\$ 84,000.00
Stock Options	\$ 42,394.00
Restricted Stock	\$ 24,787.50
<b>Cash Bonus Total</b>	<b>\$151,181.50</b>

In calculating Claimant's annual cash bonus after the merger, Washington Mutual erred by failing to include the value of the equity previously awarded to Claimant. When the value of the equity award is properly included in the calculation, Claimant's guaranteed annual cash bonus under the Providian Agreement totals \$151,181.50. The amounts due to Claimant under the paragraphs quoted above yield the figures below, which are contrasted to the amounts Washington Mutual actually paid Claimant at the time of payment of the annual bonuses. Washington Mutual's calculation error resulted in the following underpayment of bonus wages \$ **64,181.50** as detailed below.

<u>Obligations Under Section 4(b)(ii) of the Providian Agreement</u>	<u>Amount Paid By WAMU</u>	<u>Actual Entitlement Per Section 4(b)(ii)</u>	<u>Unpaid Bonus Wage Balance</u>
<i>Annual Bonus for 2005 (as paid in Jan. 2006)</i>	\$ 87,000.00	\$ 151,181.50	\$64,181.50
<b>SUBTOTAL</b>			<b>\$64,181.50</b>

### **Claim 2. Termination Benefits Payment Pursuant to the Providian Agreement**

The Providian Agreement had a three-year term commencing on October 1, 2005 (when Washington Mutual acquired Providian) and was in effect on October 13, 2006, when claimant was terminated. The Providian Agreement contains a severance provision which was triggered as of October 13, 2006. Claimant terminated his employment with Washington Mutual for Good Reason, triggering the vesting of the severance payment rights to Claimant. However,

<sup>2</sup> See Exhibit B.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Daniel Shanks**

**Social Security No.: XXX-XX-4685**

Washington Mutual miscalculated the amount owed to Claimant and underpaid him as set forth below.

Claimant is entitled to and hereby claims a pro rata share of the value of the defaulted company pursuant to 11 U.S.C. § 101 commensurate with the value of Claimant's severance benefits under Section 6(a) of the Providian Agreement, which provides in pertinent part:

**Section 6(a): Obligations of the Corporation upon Termination:** If during the Employment Period, the Corporation ... shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Corporation shall pay to the Executive a lump sum in cash within 30 days of the Date of Termination the aggregate of the following amounts:

A. the sum of (1) the Executive's Base Salary through the Date of Termination, (2) the product of (x) the Annual Bonus and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365, and (3) any compensation previously deferred by the Executive under non-qualified plans ... and the value of any unused paid time off ... (the "Accrued Obligations"), and

B. the amount equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage [defined in this paragraph]. ..., and

C. a separate lump-sum payment equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage and (3) the Retirement Contribution Percentage [defined]. . .

\*\*\*

The amount due Claimant is calculated by applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Briefly summarized, the amounts due to Claimant under the paragraphs quoted above yields the following figures:

Debtor: Washington Mutual, Inc. 08-12229 (MFW)

Claimant/Creditor: Daniel Shanks

Social Security No.: XXX-XX-4685

<b><u>Obligations Under Section 6(a)(i)(A) of the Providian Agreement</u></b>	<b><u>Amount Paid By WAMU<sup>3</sup></u></b>	<b><u>Actual Entitlement Per Section 6(a)(i)(A)</u></b>	<b><u>Unpaid Prorated Bonus Wage Balance</u></b>
<b>Prorated Annual Bonus for 2006 (annual bonus (\$151,181.50) x percent of year employed (286/365 or 78.36% ))</b>	<b>\$ 68,562.00</b>	<b>\$ 118,465.82</b>	<b>\$ 49,903.82</b>
<b>Subtotal</b>			<b>\$49,903.82</b>
<b>Severance Due = One Year Bonus + One Year Salary</b>	<b>Amount Paid By WAMU</b>	<b>Actual Entitlement Per Section 6(a)(i)</b>	<b>Unpaid Severance Balance</b>
1x [Sec. 6(a)(i)(B) calculation is the number 1 x (the sum of below)]			
<b>Annual Base Salary</b>	<b>\$ 192,006.00</b>	<b>\$ 192,006.00</b>	<b>\$0</b>
<b>+</b>			
<b>Annual Base Salary x Bonus Percentage*</b>	<b>\$ 96,003.00</b>	<b>\$ 154,398.03</b>	<b>\$ 58,395.03</b>
* Bonus percentage equals 80.41 % [Percentage calculated under Section 6(a)(i)(B) of the Providian Agreement by dividing highest pre-merger bonus (\$151,181.50 in 2005) by highest pre-merger salary (\$188,006.00 in 2005)]			
<b>Subtotal</b>			<b>\$ 58,395.03</b>

<sup>3</sup> See Exhibit C.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Daniel Shanks**

**Social Security No.: XXX-XX-4685**

	<b>Retirement Contribution</b> <i>[Sec. 6(a)(i)(C) calculation is the number 1 x (the sum of below)]</i>	<b>Amount Paid By WAMU</b>	<b>Actual Entitlement Per Section 6(a)(i)</b>	<b>Unpaid Retirement Contribution Balance</b>
<b>Ix</b>	<b>Annual Base Salary</b>	\$192,006.00	\$192,006.00	\$0
<b>+</b>	<b>Annual Base Salary x Bonus Percentage**</b> <i>Bonus percentage equals 80.41%</i>	\$ 96,003.00	\$154,398.03	\$ 58,395.03
<b>X</b>	<b>Retirement Percentage**</b> <i>Retirement percentage equals 4.00 % [**Retirement percentage as reported by Washington Mutual to other terminating employees as the highest in the three years prior to the merger Effective Date]</i>	4.00%	4.00%	
<b>Subtotal</b>		\$ 11,520.36	\$13,856.16	\$ 2,335.80
<b>Total Termination Benefits Subtotal</b>				\$ 110,634.65

**Claim 3. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages And Unpaid Termination Benefits Under The Providian Agreement**

As set forth above, Washington Mutual underpaid Claimant’s bonus wages for the 2005 performance year and underpaid his termination benefit entitlement at the time of the termination. Under Section 8 of the Providian Agreement, Claimant was entitled to interest at the applicable federal rate (“AFR”) on these unpaid balances. This section provides:

**Section 8: Full Settlement.** ... The Corporation agrees to pay, to the full extent permitted by law, ... in each case interest, on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended ...

Therefore, Claimant had a vested right to interest on the unpaid bonus wages prior to September 26, 2008, as outlined below:

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Daniel Shanks**

**Social Security No.: XXX-XX-4685**

<b><i>Unpaid Portion of 2005 Bonus Payable January 2006</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2006 – Sept. 2008]</i>	<b><i>Long-Term AFR/Compounded Semi-Annually</i></b>	<b><i>Unpaid Interest Accrued On The Total Delayed Bonus Payments</i></b>  <i>[calculated from Jan, 2006 through Sept. 26, 2008 only]</i>
<b>\$64,181.50</b>	<b>2.667 Years</b>	<b>4.68%</b>	<b>\$8,426.65</b>
<b><i>Unpaid Portion of Termination Benefits Payable October 13, 2006</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Oct. 2006 – Sept. 2008]</i>	<b><i>Long-Term AFR/Compounded Semi-Annually</i></b>	<b><i>Unpaid Interest Accrued On The Total Delayed Termination Benefits Payments</i></b>  <i>[calculated from Oct. 13, 2006 through Sept. 26, 2008 only]</i>
<b>\$110,624.65</b>	<b>1.917 Years</b>	<b>4.96%</b>	<b>\$10,892.82</b>
<b><i>Subtotal</i></b>			<b>\$19,319.47</b>

**Claim 4. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement**

Because Washington Mutual failed to pay, in full, the bonus wages that claimant was entitled to under the Providian Agreement (as detailed above), Claimant had a vested right, prior to September 26, 2008, to a wage penalty equal to 30 days wages pursuant to Labor Code Sections 1201 and 1203. This wage penalty is equal to **\$28,598.96** [(Annual salary of \$192,006.00 + Annual bonus of \$151,181.50 divided by 360 days) x 30 days].

**Claim 5. Recovery of Attorneys' Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys' fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (***regardless of the outcome***). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys' fees and expenses in costs in connection with the monies owed to him under the Providian Agreement, the Claim, the bankruptcy process, the Plan confirmation, and the Objection. All of these fees and expenses have been necessarily incurred

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Daniel Shanks**

**Social Security No.: XXX-XX-4685**

in good faith to defend Claimant's rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Attorneys' fees, costs and expenses are also recoverable under Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys' fees, costs and expenses, in an amount according to proof.

**Total Claim Value Chart**

<b>Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 64,181.50</b>
<b>Claim 2. Severance Benefits Payment Pursuant to the Providian Agreement</b>	<b>\$ 110,634.65</b>
<b>Claim 3. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement</b>	<b>\$ 19,319.47</b>
<b>Claim 4. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$28,598.96</b>
<b>Claim 5. Attorneys' Fees, Costs and Expenses</b>	<b>According to Proof</b>

**TOTAL CLAIM VALUE**

**\$222,734.58  
Plus Attorneys' Fees,  
Costs & Expenses**

# Exhibit 3





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

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

If the documents are not available, please explain:

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

**DEFINITIONS****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**INFORMATION****Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: John Webber**

**Social Security No.: XXX-XX-7811**

**ATTACHMENT A – Proof of Claim**

John Webber (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant was continuously employed by Washington Mutual up through the date of his termination of June 30, 2006. A table summarizing the calculations supporting Claimant’s total claim of **\$885,141.66, plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**CLAIMS BASED ON RIGHTS VESTING PRIOR TO SEPTEMBER 26, 2008**

**Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement**

In 2004, prior to the Providian-Washington Mutual Merger, Providian offered the Claimant and other key executives a Change of Control Employment Agreement (“**Providian Agreement**”) to provide job security and financial incentives to remain with the company in the event of corporate acquisition.<sup>1</sup> The Providian Agreement was signed on January 27, 2004, and the employment terms became effective at the time Washington Mutual acquired Providian on or about October 1, 2005.

Claimant is entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. that is commensurate with the value of Claimant’s bonus wages that were vested and unpaid prior to September 26, 2008, under Section 4(b)(ii) of the Providian Agreement. The section provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

\*\*\*

Arriving at the amount due Claimant is simply a matter of applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received the following total bonus amount:

---

<sup>1</sup> See **Exhibit A**.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: John Webber**

**Social Security No.: XXX-XX-7811**

<u>January 2005 Bonus Amount<sup>2</sup></u>	<u>Calculation</u>
Cash	\$ 200,000.00
Stock Options	\$ 185,812.00
Restricted Stock	\$ 102,455.00
<b>Cash Bonus Total</b>	<b>\$488,267.00</b>

In calculating Claimant's annual cash bonus after the merger, Washington Mutual erred by failing to include the value of the equity previously awarded to Claimant. When the value of the equity award is properly included in the calculation, Claimant's guaranteed annual cash bonus under the Providian Agreement totals \$488,267.00. The amounts due to Claimant under the paragraphs quoted above yield the figures below, which are contrasted to the amounts Washington Mutual actually paid Claimant at the time of payment of the annual bonuses. Washington Mutual's calculation error resulted in the following underpayment of bonus wages \$ 288,267.00 as detailed below.

<u>Obligations Under Section 4(b)(ii) of the Providian Agreement</u>	<u>Amount Paid By WAMU</u>	<u>Actual Entitlement Per Section 4(b)(ii)</u>	<u>Unpaid Bonus Wage Balance</u>
<i>Annual Bonus for 2005 (as paid in Jan. 2006)</i>	\$ 200,000.00	\$ 488,267.00	\$ 288,267.00
<b>SUBTOTAL</b>			<b>\$288,267.00</b>

## **Claim 2. Termination Benefits Payment Pursuant to the Providian Agreement**

The Providian Agreement had a three-year term commencing on October 1, 2005 (when Washington Mutual acquired Providian) and was in effect on June 30, 2006, when claimant was terminated. The Providian Agreement contains a severance provision which was triggered as of June 30, 2006. Claimant was terminated by Washington Mutual other than for Cause or Disability triggering the vesting of the severance payment rights to Claimant. However,

<sup>2</sup> See Exhibit B.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: John Webber**

**Social Security No.: XXX-XX-7811**

Washington Mutual miscalculated the amount owed to Claimant and underpaid him as set forth below.

Claimant is entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. § 101 commensurate with the value of Claimant's severance benefits under Section 6(a) of the Providian Agreement, which provides in pertinent part:

**Section 6(a): Obligations of the Corporation upon Termination:** If during the Employment Period, the Corporation ... shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Corporation shall pay to the Executive a lump sum in cash within 30 days of the Date of Termination the aggregate of the following amounts:

A. the sum of (1) the Executive's Base Salary through the Date of Termination, (2) the product of (x) the Annual Bonus and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365, and (3) any compensation previously deferred by the Executive under non-qualified plans ... and the value of any unused paid time off ... (the "Accrued Obligations"), and

B. the amount equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage [defined in this paragraph]. ..., and

C. a separate lump-sum payment equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage and (3) the Retirement Contribution Percentage [defined]. . .

\*\*\*

The amount due Claimant is calculated by applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Briefly summarized, the amounts due to Claimant under the paragraphs quoted above yields the following figures:

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: John Webber**

**Social Security No.: XXX-XX-7811**

<b><u>Obligations Under Section 6(a)(i)(A) of the Providian Agreement</u></b>	<b><u>Amount Paid By WAMU<sup>3</sup></u></b>	<b><u>Actual Entitlement Per Section 6(a)(i)(A)</u></b>	<b><u>Unpaid Prorated Bonus Wage Balance</u></b>
<b>Prorated Annual Bonus for 2006 (annual bonus (\$488,267.00) x percent of year employed (181/365 or 49.59% ))</b>	<b>\$ 99,180.00</b>	<b>\$ 242,131.61</b>	<b>\$ 142,951.61</b>
<b>Subtotal</b>			<b>\$142,951.61</b>

	<b><u>Amount Paid By WAMU</u></b>	<b><u>Actual Entitlement Per Section 6(a)(i)</u></b>	<b><u>Unpaid Severance Balance</u></b>
<b>Severance Due = One Year Bonus + One Year Salary</b>			
<i>Ix [Sec. 6(a)(i)(B) calculation is the number 1 x (the sum of below)]</i>			
<b>Annual Base Salary</b>	<b>\$ 250,000.00</b>	<b>\$ 250,000.00</b>	<b>\$0</b>
<b>+</b>			
<b>Annual Base Salary x Bonus Percentage*</b>	<b>\$ 200,000.00</b>	<b>\$ 488,267.00</b>	<b>\$288,267.00</b>
<i>* Bonus percentage equals 195.31 % [Percentage calculated under Section 6(a)(i)(B) of the Providian Agreement by dividing highest pre-merger bonus (\$488,267.00 in 2005) by highest pre-merger salary (\$250,000.00 in 2005)]</i>			
<b>Subtotal</b>			<b>\$ 288,267.00</b>

<sup>3</sup> See Exhibit C.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: John Webber**

**Social Security No.: XXX-XX-7811**

	<b><u>Retirement Contribution</u></b> <i>[Sec. 6(a)(i)(C) calculation is the number 1 x (the sum of below)]</i>	<b><u>Amount Paid By WAMU</u></b>	<b><u>Actual Entitlement Per Section 6(a)(i)</u></b>	<b><u>Unpaid Retirement Contribution Balance</u></b>
<i>Ix</i>	<b>Annual Base Salary</b>	\$ 250,000.00	\$ 250,000.00	\$0
+	<b>Annual Base Salary x Bonus Percentage**</b> <i>Bonus percentage equals 195.31 %</i>	\$200,000.00	\$ 488,267.00	\$ 288,267.00
<b>X</b>	<b>Retirement Percentage**</b> <i>Retirement percentage equals 4.00 %</i> <i>[**Retirement percentage as reported by Washington Mutual to other terminating employees as the highest in the three years prior to the merger Effective Date]</i>	4.00%	4.00%	
<b>Subtotal</b>		\$ 18,000.00	\$ 29,530.68	\$ 11,530.68
<b>Total Termination Benefits Subtotal</b>				\$ 442,749.29

**Claim 3. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages And Unpaid Termination Benefits Under The Providian Agreement**

As set forth above, Washington Mutual underpaid Claimant’s bonus wages for the 2005 performance year and underpaid his termination benefit entitlement at the time of the termination. Under Section 8 of the Providian Agreement, Claimant was entitled to interest at the applicable federal rate (“AFR”) on these unpaid balances. This section provides:

**Section 8: Full Settlement.** ... The Corporation agrees to pay, to the full extent permitted by law, ... in each case interest, on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended ...

Therefore, Claimant had a vested right to interest on the unpaid bonus wages prior to September 26, 2008, as outlined below:



**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: John Webber**

**Social Security No.: XXX-XX-7811**

<b><u>Unpaid Portion of 2005 Bonus Payable January 2006</u></b> [Sec. 8]	<b><u>No. of Years Delayed</u></b> [Jan. 2006 – Sept. 2008]	<b><u>Long-Term AFR/ Compounded Semi-Annually</u></b>	<b><u>Unpaid Interest On The Accrued Total Delayed Bonus Payments</u></b>  [calculated from Jan. 2006 through Sept. 26, 2008 only]
<b>\$ 288,267.00</b>	<b>2.667 Years</b>	<b>4.68%</b>	<b>\$37,847.77</b>
<b><u>Unpaid Portion of Termination Benefits Payable June 2006</u></b> [Sec. 8]	<b><u>No. of Years Delayed</u></b> [Jan. 2007 – Sept. 2008]	<b><u>Long-Term AFR/ Compounded Semi-Annually</u></b>	<b><u>Unpaid Interest On The Accrued Total Delayed Bonus and Severance Payments</u></b>  [calculated from June 30, 2006 through Sept. 26, 2008 only]
<b>\$ 442,749.29</b>	<b>2.25 Years</b>	<b>5.25%</b>	<b>\$ 54,755.35</b>
<b>SUBTOTAL</b>			<b>\$ 92,603.12</b>

**Claim 4. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement**

Because Washington Mutual failed to pay, in full, the bonus wages that claimant was entitled to under the Providian Agreement (as detailed above), Claimant had a vested right, prior to September 26, 2008, to a wage penalty equal to 30 days wages pursuant to Labor Code Sections 1201 and 1203. This wage penalty is equal to **\$ 61,522.25** [(Annual salary of \$250,000.00 + Annual bonus of \$488,267.00 divided by 360 days) x 30 days].

**Claim 5. Recovery of Attorneys' Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys' fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (***regardless of the outcome***). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys' fees and expenses in costs in connection with the monies owed to him under the Providian Agreement, the Claim, the bankruptcy process, the Plan confirmation, and the Objection. All of these fees and expenses have been necessarily incurred

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: John Webber**

**Social Security No.: XXX-XX-7811**

in good faith to defend Claimant's rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Attorneys' fees, costs and expenses are also recoverable under Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys' fees, costs and expenses, in an amount according to proof.

**Total Claim Value Chart**

<b>Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 288,267.00</b>
<b>Claim 2. Severance Benefits Payment Pursuant to the Providian Agreement</b>	<b>\$ 442,749.29</b>
<b>Claim 3. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement</b>	<b>\$ 92,603.12</b>
<b>Claim 4. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 61,522.25</b>
<b>Claim 5. Attorneys' Fees, Costs and Expenses</b>	<b>According to Proof</b>

**TOTAL CLAIM VALUE**

**\$885,141.66  
Plus Attorneys' Fees,  
Costs & Expenses**

# Exhibit 4



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

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

If the documents are not available, please explain:

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

**DEFINITIONS****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

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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.

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**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.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert G. Merritt**

**Social Security No.: XXX-XX-3503**

**ATTACHMENT A – Proof of Claim**

Robert G. Merritt (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant was continuously employed by Washington Mutual up through and including his termination date of October 3, 2005. A table summarizing the calculations supporting Claimant’s total claim of **\$319,049.12, plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**CLAIMS BASED ON RIGHTS VESTING PRIOR TO SEPTEMBER 26, 2008**

**Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement**

In 2004, prior to the Providian-Washington Mutual Merger, Providian offered the Claimant and other key executives a Change of Control Employment Agreement (“**Providian Agreement**”) to provide job security and financial incentives to remain with the company in the event of corporate acquisition.<sup>1</sup> The Providian Agreement was signed on January 27, 2004 and the employment terms became effective at the time Washington Mutual acquired Providian on or about October 1, 2005.

Claimant is entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. that is commensurate with the value of Claimant’s bonus wages that were vested and unpaid prior to September 26, 2008, under Section 4(b)(ii) of the Providian Agreement. The section provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

\*\*\*

Claimant was entitled to a prorated percentage of this amount under Section 6(a)(i)(A) of the COC agreement, calculated through his date of termination. Arriving at the amount due Claimant is simply a matter of applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant’s highest bonus prior to the effective date was paid in January 2004 when Claimant received the following total bonus amount:

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<sup>1</sup> See **Exhibit A**.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert G. Merritt**

**Social Security No.: XXX-XX-3503**

<u>January 2004 Bonus Amount<sup>2</sup></u>	<u>Calculation</u>
Cash	\$ 90,000.00
Stock Options	\$ 95,646.00
Restricted Stock	\$ 46,515.00
<b>Cash Bonus Total</b>	<b>\$232,161.00</b>

In calculating Claimant's annual cash bonus after the merger, Washington Mutual erred by failing to include the value of the equity previously awarded to Claimant. When the value of the equity award is properly included in the calculation, Claimant's guaranteed annual cash bonus under the Providian Agreement totals \$241,029.81. The amounts due to Claimant under the paragraphs quoted above yield the figures below, which are contrasted to the amounts Washington Mutual actually paid Claimant at the time it paid his prorated annual bonus upon termination. Washington Mutual's calculation error resulted in the following underpayment of bonus wages \$ 99,943.71 as detailed below.

<u>Obligations Under Section 6(a)(i)(A) of the Providian Agreement</u>	<u>Amount Paid By WAMU<sup>3</sup></u>	<u>Actual Entitlement Per Section 6(a)(i)(A)</u>	<u>Unpaid Prorated Bonus Wage Balance</u>
Prorated Annual Bonus for 2005 (\$232,161.00) annual bonus x percent of year employed (276/365 or 75.62%)	\$ 75,616.44	\$175,560.15	\$99,943.71
<b>SUBTOTAL</b>			<b>\$99,943.71</b>

### **Claim 2. Termination Benefits Payment Pursuant to the Providian Agreement**

The Providian Agreement had a three-year term commencing on October 1, 2005 (when Washington Mutual acquired Providian) and was in effect on October 3, 2005, when claimant was terminated. The Providian Agreement contains a severance provision which was triggered

<sup>2</sup> See Exhibit B.

<sup>3</sup> See Exhibit C.



**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert G. Merritt**

**Social Security No.: XXX-XX-3503**

as of October 3, 2005. Claimant terminated his employment with Washington Mutual for Good Reason triggering the vesting of the severance payment rights to Claimant. However, Washington Mutual miscalculated the amount owed to Claimant and underpaid him as set forth below.

Claimant is entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. commensurate with the value of Claimant's severance benefits under Section 6(a) of the Providian Agreement, which provides in pertinent part:

**Section 6(a): Obligations of the Corporation upon Termination:** If during the Employment Period, the Corporation ... shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Corporation shall pay to the Executive a lump sum in cash within 30 days of the Date of Termination the aggregate of the following amounts:

\*\*\*

B. the amount equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage [defined in this paragraph]. ..., and

C. a separate lump-sum payment equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage and (3) the Retirement Contribution Percentage [defined]. . .

\*\*\*

The amount due Claimant is calculated by applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Briefly summarized, the amounts due to Claimant under the paragraphs quoted above yields the following figures:

Debtor: Washington Mutual, Inc. 08-12229 (MFW)

Claimant/Creditor: Robert G. Merritt

Social Security No.: XXX-XX-3503

	<b><u>Severance Due = One Year Bonus + One Year Salary</u></b> <i>[Sec. 6(a)(i)(B) calculation is the number 1 x (the sum of below)]</i>	<b><u>Amount Paid By WAMU<sup>4</sup></u></b>	<b><u>Actual Entitlement Per Section 6(a)(i)</u></b>	<b><u>Unpaid Severance Balance</u></b>
<i>1x</i>	<b>Annual Base Salary</b>	\$ 197,000.00	\$ 197,000.00	\$0
+	<b>Annual Base Salary x Bonus Percentage*</b>	\$ 103,058.81	\$ 247,218.76	\$ 144,159.95
	<i>* Bonus percentage equals 125.49% [Percentage calculated under Section 6(a)(i)(B) of the Providian Agreement by dividing highest pre-merger bonus (\$232,161.00) in 2004) by highest pre-merger salary (\$185,001.00 in 2004)]</i>			
	<b>Subtotal</b>	<b>\$300,058.81</b>	<b>\$ 444,218.76</b>	<b>\$ 144,159.95</b>
<i>1x</i>	<b><u>Retirement Contribution</u></b> <i>[Sec. 6(a)(i)(C) calculation is the number 1 x (the sum of below)]</i>	<b><u>Amount Paid By WAMU</u></b>	<b><u>Actual Entitlement Per Section 6(a)(i)</u></b>	<b><u>Unpaid Retirement Contribution Balance</u></b>
	<b>Annual Base Salary</b>	\$197,000.00	\$197,000.00	\$0
+	<b>Annual Base Salary x Bonus Percentage**</b> <i>Bonus percentage equals 125.49%</i>	\$103,058.81	\$247,218.76	\$137,971.00
X	<b>Retirement Percentage**</b> <i>Retirement percentage equals 4.00 % [**Retirement percentage as reported by Washington Mutual to other terminating employees as the highest in the three years prior to the merger Effective Date]</i>	4.00%	4.00%	
	<b>Subtotal</b>	<b>\$12,002.35</b>	<b>\$17,521.19</b>	<b>\$ 5,766.40</b>
	<b>Total Termination Benefit Subtotal</b>			<b>\$ 149,926.35</b>

<sup>4</sup> See Exhibit C.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert G. Merritt**

**Social Security No.: XXX-XX-3503**

**Claim 3. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Prorated Bonus Wages And Unpaid Termination Benefits Under The Providian Agreement**

As set forth above, Washington Mutual underpaid Claimant's bonus wages for the prorated 2005 performance year and underpaid his termination benefit entitlement at the time of termination. Under Section 8 of the Providian Agreement, Claimant was entitled to interest at the applicable federal rate ("AFR") on these unpaid balances. This section provides:

**Section 8: Full Settlement.** ... The Corporation agrees to pay, to the full extent permitted by law, ... in each case interest, on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended ...

Therefore, Claimant had a vested right to interest on the unpaid bonus wages prior to September 26, 2008, as outlined below:

<b><i>Unpaid Portion of 2005 Prorated Bonus Plus Unpaid Termination Benefits Payable October 3, 2005</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Oct. 2005 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi-Annually</i></b>	<b><i>Unpaid Interest Accrued On The Total Delayed Bonus And Termination Benefit Payments</i></b>
<i>Termination Benefits Payable October 3, 2005</i>			<i>[calculated from Oct. 3, 2005 through Sept. 26, 2008 only]</i>
<b>\$249,870.06</b>	<b>2.917 Years</b>	<b>4.35%</b>	<b>\$ 33,415.64</b>
<i>[\$99,943.71 + \$144,159.95 + \$5,766.40]</i>			
<b>SUBTOTAL</b>			<b>\$ 33,415.64</b>

**Claim 4. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement**

Because Washington Mutual failed to pay, in full, the bonus wages that claimant was entitled to under the Providian Agreement (as detailed above), Claimant had a vested right, prior to September 26, 2008, to a wage penalty equal to 30 days wages pursuant to Labor Code Sections 1201 and 1203. This wage penalty is equal to **\$35,763.42** [(Annual salary of \$197,000.00 + Annual bonus of \$232,161.00 divided by 360 days) x 30 days].

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert G. Merritt**

**Social Security No.: XXX-XX-3503**

**Claim 5. Recovery of Attorneys' Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys' fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (*regardless of the outcome*). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys' fees and expenses in costs in connection with the monies owed to him under the Providian Agreement, the Claim, the bankruptcy process, the Plan confirmation, and the Objection. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant's rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Attorneys' fees, costs and expenses are also recoverable under Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys' fees, costs and expenses, in an amount according to proof.

**Total Claim Value Chart**

<b><i>Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement</i></b>	<b><i>\$ 99,943.71</i></b>
<b><i>Claim 2. Severance Benefits Payment Pursuant to the Providian Agreement</i></b>	<b><i>\$ 149,926.35</i></b>
<b><i>Claim 3. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement</i></b>	<b><i>\$ 33,415.64</i></b>
<b><i>Claim 4. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement</i></b>	<b><i>\$ 35,763.42</i></b>
<b><i>Claim 5. Attorneys' Fees, Costs and Expenses</i></b>	<b><i>According to Proof</i></b>

***TOTAL CLAIM VALUE***

***\$ 319,049.12  
Plus Attorneys' Fees,  
Costs & Expenses***

# Exhibit 5



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

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

If the documents are not available, please explain: **WMILT is in possession of SERAP balance and payment information**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

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

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Evidence of Perfection**

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

**INFORMATION****Acknowledgment of Filing of Claim**

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**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.



**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert Boxberger**

**Social Security No.: XXX-XX-2384**

**ATTACHMENT A – Proof of Claim**

Robert C. Boxberger (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant was continuously employed by Washington Mutual up through and including his termination date of January 31, 2008. A table summarizing the calculations supporting Claimant’s total claim of **\$1,093,615.99, plus SERAP balance, attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**CLAIMS BASED ON RIGHTS VESTING PRIOR TO SEPTEMBER 26, 2008**

**Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement**

In 2004, prior to the Providian-Washington Mutual Merger, Providian offered the Claimant and other key executives a Change of Control Employment Agreement (“**Providian Agreement**”) to provide job security and financial incentives to remain with the company in the event of corporate acquisition.<sup>1</sup> The Providian Agreement was signed on January 27, 2004, and the employment terms became effective at the time Washington Mutual acquired Providian on or about October 1, 2005.

Claimant is entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. that is commensurate with the value of Claimant’s bonus wages that were vested and unpaid prior to September 26, 2008, under Section 4(b)(ii) of the Providian Agreement. The section provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

\*\*\*

Arriving at the amount due Claimant is simply a matter of applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received the following total bonus amount:

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<sup>1</sup> See **Exhibit A**.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert Boxberger**

**Social Security No.: XXX-XX-2384**

<b><u>January 2005 Bonus Amount<sup>2</sup></u></b>	<b><u>Calculation</u></b>
<b>Cash</b>	<b>\$ 200,000.00</b>
<b>Stock Options</b>	<b>\$ 165,968.00</b>
<b>Restricted Stock</b>	<b>\$ 92,540.00</b>
<b>Cash Bonus Total</b>	<b>\$458,508.00</b>

In calculating Claimant's annual cash bonus after the merger, Washington Mutual erred by failing to include the value of the equity previously awarded to Claimant. When the value of the equity award is properly included in the calculation, Claimant's guaranteed annual cash bonus under the Providian Agreement totals \$458,508.00. The amounts due to Claimant under the paragraphs quoted above yield the figures below, which are contrasted to the amounts Washington Mutual actually paid Claimant at the time of payment of the annual bonuses. Washington Mutual's calculation error resulted in the following underpayment of bonus wages \$ 643,457.33 as detailed below.

<b><u>Obligations Under Section 4(b)(ii) of the Providian Agreement</u></b>	<b><u>Amount Paid By WAMU</u></b>	<b><u>Actual Entitlement Per Section 4(b)(ii)</u></b>	<b><u>Unpaid Bonus Wage Balance</u></b>
<b>Annual Bonus for 2005 (as paid in Jan. 2006)</b>	<b>\$ 225,000.00</b>	<b>\$ 458,508.00</b>	<b>\$ 233,508.00</b>
<b>Annual Bonus for 2006 (as paid in Jan. 2007)</b>	<b>\$235,000.00<sup>3</sup></b>	<b>\$ 458,508.00</b>	<b>\$223,508.00</b>
<b>Annual Bonus for 2007 (as paid in Jan. 2008)</b>	<b>\$ 272,066.67</b>	<b>\$ 458,508.00</b>	<b>\$ 186,441.33</b>
<b>Subtotal</b>			<b>\$643,457.33</b>

<sup>2</sup> See Exhibit B.

<sup>3</sup> Claimant unable to locate his documentation for his Jan. 2007 bonus, but he believes that he received a cash bonus of \$235,000.00 at that time.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert Boxberger**

**Social Security No.: XXX-XX-2384**

**Claim 2. Termination Benefits Payment Pursuant to the Providian Agreement**

The Providian Agreement had a three-year term commencing on October 1, 2005 (when Washington Mutual acquired Providian) and was in effect on January 31, 2008, when claimant was terminated. The Providian Agreement contains a severance provision which was triggered as of January 31, 2008. Claimant terminated his employment with Washington Mutual for Good Reason triggering the vesting of the severance payment rights to Claimant. However, Washington Mutual miscalculated the amount owed to Claimant and underpaid him as set forth below.

Claimant is entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. § 101 commensurate with the value of Claimant's severance benefits under Section 6(a) of the Providian Agreement, which provides in pertinent part:

**Section 6(a): Obligations of the Corporation upon Termination:** If during the Employment Period, the Corporation ... shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Corporation shall pay to the Executive a lump sum in cash within 30 days of the Date of Termination the aggregate of the following amounts:

A. the sum of (1) the Executive's Base Salary through the Date of Termination, (2) the product of (x) the Annual Bonus and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365, and (3) any compensation previously deferred by the Executive under non-qualified plans ... and the value of any unused paid time off ... (the "Accrued Obligations"), and

B. the amount equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage [defined in this paragraph]. ..., and

C. a separate lump-sum payment equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage and (3) the Retirement Contribution Percentage [defined]. . .

\*\*\*

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert Boxberger**

**Social Security No.: XXX-XX-2384**

The amount due Claimant is calculated by applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Briefly summarized, the amounts due to Claimant under the paragraphs quoted above yields the following figures:

<b><u>Obligations Under Section 6(a)(i)(A) of the Providian Agreement</u></b>	<b><u>Amount Paid By WAMU</u></b>	<b><u>Actual Entitlement Per Section 6(a)(i)(A)</u></b>	<b><u>Unpaid Prorated Bonus Wage Balance</u></b>
<b>Prorated Annual Bonus for 2008 (annual bonus (\$458,508.00) x percent of year employed (31/365 or 8.50% ))</b>	<b>\$ 16,986.30</b>	<b>\$ 38,973.18</b>	<b>\$ 21,986.88</b>
<b>Subtotal</b>			<b>\$21,986.88</b>
<b>Severance Due = One Year Bonus + One Year Salary</b>	<b>Amount Paid By WAMU<sup>4</sup></b>	<b>Actual Entitlement Per Section 6(a)(i)</b>	<b>Unpaid Severance Balance</b>
<i>1x [Sec. 6(a)(i)(B) calculation is the number 1 x (the sum of below)]</i>			
<b>Annual Base Salary</b>	<b>\$ 306,075.00</b>	<b>\$ 306,075.00</b>	<b>\$0</b>
<b>+</b>			
<b>Annual Base Salary x Bonus Percentage*</b>	<b>\$ 272,066.67</b>	<b>\$ 561,351.34</b>	<b>\$289,284.67</b>
<i>* Bonus percentage equals 183.40 % [Percentage calculated under Section 6(a)(i)(B) of the Providian Agreement by dividing highest pre-merger bonus (\$ 458,508.00 in 2005) by highest pre-merger salary (\$ 250,000.00 in 2005)]</i>			
<b>Subtotal</b>			<b>\$289,284.67</b>

<sup>4</sup> See Exhibit C.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert Boxberger**

**Social Security No.: XXX-XX-2384**

	<b>Retirement Contribution</b> <i>[Sec. 6(a)(i)(C) calculation is the number 1 x (the sum of below)]</i>	<b>Amount Paid By WAMU</b>	<b>Actual Entitlement Per Section 6(a)(i)</b>	<b>Unpaid Retirement Contribution Balance</b>
<b>Ix</b>	<b>Annual Base Salary</b>	<b>\$306,075.00</b>	<b>\$306,075.00</b>	<b>\$0</b>
<b>+</b>	<b>Annual Base Salary x Bonus Percentage**</b> <i>Bonus percentage equals 183.40%</i>	<b>\$272,066.67</b>	<b>\$561,351.34</b>	<b>\$ 289,284.67</b>
<b>X</b>	<b>Retirement Percentage**</b> <i>Retirement percentage equals 4.00 % [**Retirement percentage as reported by Washington Mutual to other terminating employees as the highest in the three years prior to the merger Effective Date]</i>	<b>4.00%</b>	<b>4.00%</b>	
<b>Subtotal</b>		<b>\$23,125.67</b>	<b>\$34,697.05</b>	<b>\$ 11,571.39</b>
<b>Total Termination Benefits Subtotal</b>				<b>\$ 322,842.94</b>

**Claim 3. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages And Unpaid Termination Benefits Under The Providian Agreement**

As set forth above, Washington Mutual underpaid Claimant's bonus wages for the 2005 - 2007 performance years and underpaid his termination benefit entitlement at the time of the termination. Under Section 8 of the Providian Agreement, Claimant was entitled to interest at the applicable federal rate ("AFR") on these unpaid balances. This section provides:

**Section 8: Full Settlement.** ... The Corporation agrees to pay, to the full extent permitted by law, ... in each case interest, on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended ...

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert Boxberger**

**Social Security No.: XXX-XX-2384**

Therefore, Claimant had a vested right to interest on the unpaid bonus wages prior to September 26, 2008, as outlined below:

<b><u>Unpaid Portion of 2005 Bonus Payable January 2006</u></b> [Sec. 8]	<b><u>No. of Years Delayed</u></b> [Jan. 2006 – Sept. 2008]	<b><u>Long-Term AFR/Compounded Semi-Annually</u></b>	<b><u>Unpaid Interest Accrued On The Delayed Bonus Payment</u></b>  [calculated from Jan. 2006 through Sept. 25, 2008 only]
<b>\$ 233,508.00</b>	<b>2.667 Years</b>	<b>4.68%</b>	<b>\$ 30,658.23</b>
<b><u>Unpaid Portion of 2006 Bonus Payable January 2007</u></b> [Sec. 8]	<b><u>No. of Years Delayed</u></b> [Jan. 2007 – Sept. 2008]	<b><u>Long-Term AFR/Compounded Semi-Annually</u></b>	<b><u>Unpaid Interest Accrued On The Delayed Bonus Payment</u></b>  [calculated from Jan. 2007 through Sept. 26, 2008 only]
<b>\$ 223,508.00</b>	<b>1.667 Years</b>	<b>4.68%</b>	<b>\$ 17,914.52</b>
<b><u>Unpaid Portion of 2007 Bonus Payable January 2008</u></b> [Sec. 8]	<b><u>No. of Years Delayed</u></b> [Jan. 2008 – Sept. 2008]	<b><u>Long-Term AFR/Compounded Semi-Annually</u></b>	<b><u>Unpaid Interest Accrued On The Delayed Bonus Payment</u></b>  [calculated from Jan. 2008 through Sept. 26, 2008 only]
<b>\$ 186,441.33</b>	<b>.667 Years</b>	<b>4.41%</b>	<b>\$ 5,501.42</b>
<b><u>Unpaid Portion of Termination Benefits Payable Januar, 2008</u></b> [Sec. 8]	<b><u>No. of Years Delayed</u></b> [Jan. 2008 – Sept. 2008]	<b><u>Long-Term AFR/Compounded Semi-Annually</u></b>	<b><u>Unpaid Interest Accrued On The Delayed Termination Benefits Payment</u></b>  [calculated from Jan. 2008 through Sept. 26, 2008 only]
<b>\$ 322,842.94</b>	<b>.667 Years</b>	<b>4.417%</b>	<b>\$ 9,526.29</b>
<b><u>Subtotal</u></b>			<b>\$ 63,600.47</b>

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert Boxberger**

**Social Security No.: XXX-XX-2384**

**Claim 4. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement**

Because Washington Mutual failed to pay, in full, the bonus wages and termination benefits that claimant was entitled to under the Providian Agreement (as detailed above), Claimant had a vested right, prior to September 26, 2008, to a wage penalty equal to 30 days wages pursuant to Labor Code Sections 1201 and 1203. This wage penalty is equal to \$ **63,715.25** [(Annual salary of \$306,075.00 + Annual bonus of \$458,508.00 divided by 360 days) x 30 days].

**Claim 5. Vested Right To Account Balance Under WMI Supplemental Executive Retirement Accumulation Plan (SERAP)**

Claimant was a participant in the Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan (SERAP) with a vested account balance on January 31, 2008. Claimant is informed and believes that WMILT paid only a portion of this vested of balance at the time of his termination. Pursuant to Section 6(a)(i)(D) of the Providian Agreement, Claimant was entitled to payment of “an amount equal to the unvested portion of the qualified and unqualified retirement contribution account in addition to any vested amounts due under the retirement plans of the Corporation.” Accordingly, Claimant is entitled to the remainder of his balance in his SERAP as of January 31, 2008.<sup>5</sup>

**Claim 6. Recovery of Attorneys’ Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys’ fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (**regardless of the outcome**). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys’ fees and expenses in costs in connection with the monies owed to him under the Providian Agreement, the Claim, the bankruptcy process, the Plan confirmation, and the Objection. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant’s rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Attorneys’ fees, costs and expenses are also recoverable under ERISA and under Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys’ fees, costs and expenses, in an amount according to proof.

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<sup>5</sup> The precise amounts of Claimant’s SERAP balance and payment made are not available to Claimant at this time. Claimant has requested the SERAP balance and payment information and documentation from WMILT, but none has been provided by WMILT to date.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert Boxberger**

**Social Security No.: XXX-XX-2384**

**Total Claim Value Chart**

<b>Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 643,457.33</b>
<b>Claim 2. Severance Benefits Payment Pursuant to the Providian Agreement</b>	<b>\$ 322,842.94</b>
<b>Claim 3. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement</b>	<b>\$ 63,600.47</b>
<b>Claim 4. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 63,715.25</b>
<b>Claim 5. Vested Rights To Supplemental Executive Retirement Accumulation Plan (SERAP) Account Balance</b>	<b>According to Proof</b>
<b>Claim 6. Attorneys' Fees, Costs and Expenses</b>	<b>According to Proof</b>

**TOTAL CLAIM VALUE**

**\$1,093,615.99**  
**Plus SERAP Balance, Attorneys' Fees,**  
**Costs & Expenses**



# Exhibit 6



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

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

If the documents are not available, please explain: **WMILT is in possession of Claimants payroll information**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

## DEFINITIONS

**Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

## INFORMATION

**Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Laura C. Rogers-Rodrigues**

**Social Security No. XXX-XX-2228**

**ATTACHMENT A – Proof of Claim**

Laura C. Rogers-Rodrigues (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant remained employed by Washington Mutual up until the termination of Claimant’s employment following its subsidiary Bank’s placement into receivership. A table summarizing the calculations supporting Claimant’s total claim of **\$1,229,291.70, plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement**

In 2004, prior to the Providian-Washington Mutual Merger, Providian offered the Claimant and other key executives a Change of Control Employment Agreement (“**Providian Agreement**”) to provide job security and financial incentives to remain with the company in the event of corporate acquisition.<sup>1</sup> The Providian Agreement was signed on July 20, 2004, and the employment terms became effective at the time Washington Mutual acquired Providian on or about October 1, 2005.

Claimant is entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. that is commensurate with the value of Claimant’s bonus wages that were vested and unpaid prior to September 26, 2008, under Section 4(b)(ii) of the Providian Agreement. The section provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

\*\*\*

Arriving at the amount due Claimant is simply a matter of applying her individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received the following total bonus amount:

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<sup>1</sup> See **Exhibit A**.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)****Claimant/Creditor: Laura C. Rogers-Rodriguez****Social Security No. XXX-XX-2228**

<u>January 2005 Bonus Amount<sup>2</sup></u>	<u>Calculation</u>
Cash	\$78,000.00
Stock Options	\$46,002.00
Restricted Stock	\$26,440.00
<b>Cash Bonus Total</b>	<b>\$150,442.00</b>

In calculating Claimant's annual cash bonus after the merger, Washington Mutual erred by failing to include the value of the equity previously awarded to Claimant. When the value of the equity award is properly included in the calculation, Claimant's guaranteed annual cash bonus under the Providian Agreement totals \$150,442.00. The amounts due to Claimant under the paragraphs quoted above yield the figures below, which are contrasted to the amounts Washington Mutual actually paid Claimant at the time of payment of the annual bonuses. Washington Mutual's calculation error resulted in the underpayment of bonus wages of \$300,857.01.

<u>Obligations Under Section 4(b)(ii) of the Providian Agreement</u>	<u>Amount Paid By WaMu</u>	<u>Actual Entitlement Per Section 4(b)(ii)</u>	<u>Unpaid Bonus Wage Balance</u>
<i>Annual Bonus for 2005 (as paid in Jan. 2006)</i>	\$83,700.00	\$150,442.00	\$66,742.00
<i>Annual Bonus for 2006 (as paid in Jan. 2007)</i>	\$99,238.55	\$150,442.00	\$51,203.45
<i>Annual Bonus for 2007 (as paid in Jan. 2008)</i>	\$78,000.00	\$150,442.00	\$72,442.00
<i>Pro-rated Annual Bonus for 2008 (pro-rated up to Sept. 26, 2008 only)</i>	\$ 0.00	\$110,469.56	\$ 110,469.56
	* 35,641.00 Paid by Chase in Jan. 2009 - No offset permitted under Providian Agreement		
<b>SUBTOTAL</b>			<b>\$ 300,857.01</b>

<sup>2</sup> See Exhibit B.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)****Claimant/Creditor: Laura C. Rogers-Rodriguez****Social Security No. XXX-XX-2228****Claim 2. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement**

As set forth above, Washington Mutual underpaid Claimant's bonus wages for the 2005 – 2007 performance years. Under Section 8 of the Providian Agreement, Claimant was entitled to interest at the applicable federal rate ("AFR") for the unpaid wage balance. This section provides:

**Section 8: Full Settlement.** ... The Corporation agrees to pay, to the full extent permitted by law, ... in each case interest, on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended ...

Therefore, Claimant had a vested right to interest on the unpaid bonus wages prior to September 26, 2008, as outlined below:

<b><i>Unpaid Portion of 2005 Bonus Payable January 2006 [Sec. 8]</i></b>	<b><i>No. of Years Delayed [Jan. 2006 – Sept. 2008]</i></b>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2005 Bonus Payment [calculated from Jan. 2006 through Sept. 26, 2008 only]</i></b>
<b>\$66,742.00</b>	<b>2.667 Years</b>	<b>4.68 %</b>	<b>\$ 8,762.83</b>
<b><i>Unpaid Portion of 2006 Bonus Payable January 2007 [Sec. 8]</i></b>	<b><i>No. of Years Delayed [Jan. 2007 – Sept. 2008]</i></b>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2006 Bonus Payment [calculated from Jan. 2007 through Sept. 26, 2008 only]</i></b>
<b>\$51,203.45</b>	<b>1.667 Years</b>	<b>4.68%</b>	<b>\$4,104.04</b>
<b><i>Unpaid Portion of 2007 Bonus Payable January 2008 [Sec. 8]</i></b>	<b><i>No. of Years Delayed [Jan. 2008 – Sept. 2008]</i></b>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2008 Bonus Payment [calculated from Jan. 2008 through Sept. 26, 2008 only]</i></b>
<b>\$72,442.00</b>	<b>.667 Years</b>	<b>4.41 %</b>	<b>\$ 2,137.58</b>
<b>SUBTOTAL</b>			<b>\$ 15,004.45</b>

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Laura C. Rogers-Rodrigues**

**Social Security No. XXX-XX-2228**

**Claim 3. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement**

Because Washington Mutual failed to pay, in full, the bonus wages that claimant was entitled to under the Providian Agreement (as detailed above), Claimant had a vested right, prior to September 26, 2008, to a wage penalty equal to 30 days wages pursuant to Labor Code Sections 1201 and 1203. This wage penalty is equal to **\$27,536.83** [(Annual salary of \$180,000.00 + Annual bonus of \$150,442.00 divided by 360 days) x 30 days].

**Claim 4. Severance Benefits Payment Pursuant to the Providian Agreement**

The Providian Agreement had a three-year term commencing on October 1, 2005 (when Washington Mutual acquired Providian) and was still in the effect on September 25, 2008. The Providian Agreement contains a severance provision which was triggered as a result of termination of Claimant's employment. Claimant was employed by Washington Mutual at the time its subsidiary bank was placed into receivership and its assets transferred to J.P. Morgan Chase. As a result, Claimant became an employee of J.P. Morgan Chase and her employment with Washington Mutual was terminated, triggering the vesting of the severance payment rights to Claimant.

Claimant is entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. commensurate with the value of Claimant's severance benefits under Section 6(a) of the Providian Agreement, which provides in pertinent part:

**Section 6(a): Obligations of the Corporation upon Termination:** If during the Employment Period, the Corporation ... shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Corporation shall pay to the Executive a lump sum in cash within 30 days of the Date of Termination the aggregate of the following amounts:

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B. the amount equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage [defined in this paragraph]. ..., and

C. a separate lump-sum payment equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage and (3) the Retirement Contribution Percentage [defined] . . .

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**Debtor: Washington Mutual, Inc. 08-12229 (MFW)****Claimant/Creditor: Laura C. Rogers-Rodrigues****Social Security No. XXX-XX-2228**

The amount due Claimant is calculated by applying her individual financial data to the formulae specified in the Providian Agreement and calculating the result. Briefly summarized, the amounts due to Claimant under the paragraphs quoted above yields the following figures:

	<b><u>Severance Due = One Year Bonus + One Year Salary</u></b>	<b><u>Calculation</u></b>
1x	<i>[Sec. 6(a)(i)(B) calculation is the number 1 x (the sum of below)</i>	<b>1</b>
<hr/>		
	<b><i>Annual Base Salary</i></b>	<b>\$ 180,000.00</b>
+		
	<b><i>Annual Base Salary x Bonus Percentage*</i></b>	<b>\$ 176,471.55</b>
	<i>* Bonus percentage equals 98.04 % [Percentage calculated under Section 6(a)(i)(B) of the Providian Agreement by dividing highest pre-merger bonus (\$150,442.00 in 2005) by highest pre-merger salary (\$153,450.00 in 2005)]</i>	
<hr/>		
	<b><i>Subtotal</i></b>	<b>\$ 356,471.55</b>

	<b><u>Retirement Contribution</u></b>	<b><u>Calculation</u></b>
1x	<i>[Sec. 6(a)(i)(C) calculation is the number 1 x (the sum of below)</i>	<b>1</b>
<hr/>		
	<b><i>Annual Base Salary</i></b>	<b>\$ 180,000</b>
+		
	<b><i>Annual Base Salary x Bonus Percentage*-</i></b>	<b>\$ 176,471.55</b>
	<i>* Bonus percentage equals 98.04.%</i>	

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Laura C. Rogers-Rodriguez**

**Social Security No. XXX-XX-2228**

X	<p><b>Retirement Percentage*</b></p> <p>4.00 %</p>
	<p><i>* Retirement percentage equals 4.00 % [Retirement percentage as reported by Washington Mutual to other terminating employees as the highest in the three years prior to the merger Effective Date]</i></p>

<b>Subtotal</b>	<b>\$ 14,258.86</b>
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<b>Total Severance Subtotal</b>	<b>\$ 370,730.41</b>
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**Claim 5. Lump Sum Payment Under The Washington Mutual Change In Control Agreement**

On March 26, 2006, Claimant executed a Change In Control Agreement drafted by Washington Mutual, Inc. to be effective for employees of its subsidiary corporations (“**WaMu CIC Agreement**”).<sup>3</sup> The WaMu CIC Agreement was in effect on September 26, 2008. The event of placing Washington Mutual Bank into receivership and selling its assets to J.P. Morgan Chase constitutes a change in control under Section 5(f)(5) of the WaMu CIC Agreement since this event resulted in a “transfer of all or substantially all of the [Holding Company]’s assets to another Person . . . whether assisted or unassisted, voluntary or involuntary.” Further, because of the receivership and sale, Claimant became an employee of J.P. Morgan Chase, thereby terminating Claimant’s employment with Washington Mutual. This termination triggered severance benefits under section 5(c) and 5(d) which provide:

**Section 5(c): Termination.** . . . . If (i) Employee’s employment is terminated by Washington Mutual or its successor without “cause” (as defined below) upon or within two years after a Change in Control (as defined below) . . . and no cause for Washington Mutual to terminate exists, then:

1. Employee shall be entitled to receive, within five business days after the effective date of such termination . . . , from Washington Mutual or its successor, a lump sum equal to one and a half times Employee’s annual compensation. Notwithstanding the preceding, the amount paid to employee under this subsection (1) shall be offset by any payment received by Employee

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<sup>3</sup> See Exhibit C.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Laura C. Rogers-Rodrigues**

**Social Security No. XXX-XX-2228**

from the Company or any acquired company pursuant to: (i) a severance or change of control agreement, arrangement or plan, with the exception of any such payment received more than two years before all of the conditions of this Section 5(c) were satisfied, or (ii) The Workers Authorization Relocation and Notification Act (WARN Act).

\*\*\*

**Section 5(d).** For purposes of Section 5(c), Employee's "annual compensation" shall include all items of compensation provided by Washington Mutual other than the value of equity rights granted to Employee. Employee's "annual compensation" shall include the greatest of (i) the total of Employee's salary and target bonus for the calendar year in which the termination occurs (if established before the termination), (ii) Employee's salary and actual bonus for the prior calendar year (annualized if Employee was not employed by Washington Mutual for the entire previous calendar year), or (iii) Employee's salary and actual bonus for the calendar year immediately preceding the year in which the Change in Control occurred (annualized if Employee was not employed by Washington Mutual for the entire such calendar year). Employee's "annual compensation" shall also include the amount of the contributions made or anticipated to have been made on Employee's behalf to benefit plans for the calendar year in which the termination occurs, including without limitation contributions to pension plans and plans qualified under Section 125 of the Internal Revenue Code of 1986 (cafeteria plans), provided that "annual compensation" shall not include contributions to any plans that contain provisions that provide benefits, service credit, or accelerated vesting upon a change in control.

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The total value of the claim owed on the basis of this contract term is determined by the following equation based on the provisions cited above:

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)****Claimant/Creditor: Laura C. Rogers-Rodriguez****Social Security No. XXX-XX-2228**

<b><i>Obligations Under Section 5(c)(1) and (d) of the Washington CIC Agreement</i></b>	<b><u>Lump Sum Calculation</u></b>
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<b><i>“Lump Sum” Severance Payment</i></b> <i>[Sec. 5(c)(1) and (d)]</i>	\$ 518,163.00
	*Annual Compensation of \$180,000 (salary) + \$150,442 (Bonus guarantee) + \$15,000 (Benefits) <sup>4</sup> x 1.5

<b><i>Subtotal</i></b>	<b>\$ 518,163.00</b>
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As such, Claimant is entitled to a lump sum payment equal to **\$ 518,163.00**, pursuant to Sections 5(c)(1) and 5(d) of the WaMu CIC Agreement.

**Claim 6. Recovery of Attorneys’ Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys’ fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (***regardless of the outcome***). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys’ fees and expenses in costs in connection with the monies owed to her under the Providian Agreement, the Claim, the bankruptcy process, the Plan confirmation, and the Objection. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant’s rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Similarly, Section 9 of the WaMu CIC Agreement permits the recovery of attorneys’ fees, costs and expenses. Attorneys’ fees, costs and expenses are also recoverable under ERISA and Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys’ fees, costs and expenses, in an amount according to proof.

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<sup>4</sup> The figure for Benefits is estimated based upon information presently available to Claimant. She has requested his payroll records from WMILT and reserves the right to seek the actual benefit compensation under the WMI CIC Agreement according to proof at the Hearing.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)****Claimant/Creditor: Laura C. Rogers-Rodrigues****Social Security No. XXX-XX-2228****Claim 7. Alternate Claim – Washington Mutual, Inc. Severance Plan**

To the extent that it is determined that a change in control did not occur or WMI is found not to be responsible for the obligations under the WaMu Change in Control Agreement, then Claimant is entitled to severance pay in the amount of \$495,663.00 pursuant to the WaMu Severance Plan.

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**Total Claim Value Chart**

<b><i>Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement</i></b>	<b>\$ 300,857.01</b>
<b><i>Claim 2. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement</i></b>	<b>\$ 15,004.45</b>
<b><i>Claim 3. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement</i></b>	<b>\$ 27,536.83</b>
<b><i>Claim 4. Severance Benefits Payment Pursuant to the Providian Agreement</i></b>	<b>\$ 370,730.41</b>
<b><i>Claim 5. Lump Sum Payment Under the Washington Mutual Change In Control Agreement</i></b>	<b>\$ 515,163.00</b>
<b><i>Claim 6. Attorneys' Fees, Costs and Expenses</i></b>	<b><i>According to Proof</i></b>
<b><i>Claim 7. Alternate Claim – WaMu Severance Plan</i></b>	<b><i>Alternate Only – per above</i></b>
<b><i>TOTAL CLAIM VALUE</i></b>	<b>\$1,229,291.70</b>

# Exhibit 7

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

UNITED STATES BANKRUPTCY COURT		District of Delaware	<b>PROOF OF CLAIM</b>
Name of Debtor: <b>Washington Mutual Inc.</b>		Case Number: <b>08-12229 (MFW)</b>	<b>COURT USE ONLY</b>
NOTE: <i>Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.</i>			
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>Richard Strauch</b>			
Name and address where notices should be sent: <b>c/o Stephan Kyle, Esq., Kyle Law Corporation 255 California Street, Suite 1300, San Francisco, CA 94111</b>		Telephone number: <b>(415) 839-8100</b> email: <b>skyle@kylelawcorp.com</b>	<input checked="" type="checkbox"/> Check this box if this claim amends a previously filed claim.  <b>Court Claim Number:</b> <u>2420</u> <i>(If known)</i>  <b>Filed on:</b> <u>03/30/2009</u>
Name and address where payment should be sent (if different from above):		Telephone number: email:	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
<b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>2,807,399.91</u> *Plus attorneys' fees, costs & expenses If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.			
<b>2. Basis for Claim:</b> <u>See Attachment A</u> (See instruction #2)			
<b>3. Last four digits of any number by which creditor identifies debtor:</b>  <u>2 5 8 7</u>	<b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a)	<b>3b. Uniform Claim Identifier (optional):</b> _____ (See instruction #3b)	
<b>4. Secured Claim</b> (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		<b>Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:</b> \$ _____	
<b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <b>Describe:</b>		<b>Basis for perfection:</b> _____	
<b>Value of Property:</b> \$ _____		<b>Amount of Secured Claim:</b> \$ _____	
<b>Annual Interest Rate</b> _____% <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		<b>Amount Unsecured:</b> \$ _____	
<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.</b>			
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).	<b>Amount entitled to priority:</b> \$ _____
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).	
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.			
<b>6. Credits.</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)			

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

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

If the documents are not available, please explain: **WMILT is in possession of Claimant's SERAP information and payroll information**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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



**DEFINITIONS****INFORMATION****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Richard Strauch**

**Social Security No. XXX-XX-2587**

**ATTACHMENT A – Proof of Claim**

Richard Strauch (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant remained employed by Washington Mutual up through and including the termination of Claimant’s employment following its subsidiary Bank’s placement into receivership. A table summarizing the calculations supporting Claimant’s total claim of **\$2,807,399.91, plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement**

In 2004, prior to the Providian-Washington Mutual Merger, Providian offered the Claimant and other key executives a Change of Control Employment Agreement (“**Providian Agreement**”) to provide job security and financial incentives to remain with the company in the event of corporate acquisition.<sup>1</sup> The Providian Agreement was signed on January 27, 2004, and the employment terms became effective at the time Washington Mutual acquired Providian on or about October 1, 2005.

Claimant is entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. that is commensurate with the value of Claimant’s bonus wages that were vested and unpaid prior to September 26, 2008, under Section 4(b)(ii) of the Providian Agreement. The section provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

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Arriving at the amount due Claimant is simply a matter of applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received the following total bonus amount:

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<sup>1</sup> See **Exhibit A.**

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**Claimant/Creditor: Richard Strauch**  
**Social Security No. XXX-XX-2587**

<u>January 2005 Bonus Amount<sup>2</sup></u>	<u>Calculation</u>
<i>Cash</i>	<i>\$100,000.00</i>
<i>Stock Options</i>	<i>\$117,260.00</i>
<i>Restricted Stock</i>	<i>\$ 64,448.00</i>
<b><i>Cash Bonus Total</i></b>	<b><i>\$281,708.00</i></b>

In calculating Claimant's annual cash bonus after the merger, Washington Mutual erred by failing to include the value of the equity previously awarded to Claimant. When the value of the equity award is properly included in the calculation, Claimant's guaranteed annual cash bonus under the Providian Agreement totals \$281,708.00. The amounts due to Claimant under the paragraphs quoted above yield the figures below, which are contrasted to the amounts Washington Mutual actually paid Claimant at the time of payment of the annual bonuses. Washington Mutual's calculation error resulted in the following underpayment of bonus wages **\$715,052.50** as detailed below.

<u>Obligations Under Section 4(b)(ii) of the Providian Agreement</u>	<u>Amount Paid By WAMU</u>	<u>Actual Entitlement Per Section 4(b)(ii)</u>	<u>Unpaid Bonus Wage Balance</u>
<i>Annual Bonus for 2005 (as paid in Jan. 2006)</i>	<b>\$105,000.00</b>	<b>\$281,708.00</b>	<b>\$176,708.00</b>
<i>Annual Bonus for 2006 (as paid in Jan. 2007)</i>	<b>\$131,929.32</b>	<b>\$281,708.00</b>	<b>\$149,778.68</b>
<i>Annual Bonus for 2007 (as paid in Jan. 2008)</i>	<b>\$100,000.00</b>	<b>\$281,708.00</b>	<b>\$181,708.00</b>
<i>Pro-rated Annual Bonus for 2008 (pro-rated up to Sept. 26, 2008 only)</i>	<b>\$0*</b>	<b>\$206,857.82</b>	<b>\$206,857.82</b>
	<small>* \$50,000 was Paid by Chase in Jan. 2009 – No offset permitted under Providian Agreement</small>		
<b>SUBTOTAL</b>			<b>\$715,052.50</b>

<sup>2</sup> See Exhibit B.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)****Claimant/Creditor: Richard Strauch****Social Security No. XXX-XX-2587****Claim 2. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement**

As set forth above, Washington Mutual underpaid Claimant's bonus wages for the 2005 – 2007 performance years. Under Section 8 of the Providian Agreement, Claimant was entitled to interest at the applicable federal rate ("AFR") for the unpaid wage balance. This section provides:

**Section 8: Full Settlement.** ... The Corporation agrees to pay, to the full extent permitted by law, ... in each case interest, on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended ...

Therefore, Claimant had a vested right to interest on the unpaid bonus wages prior to September 26, 2008, as outlined below:

<b><i>Unpaid Portion of 2005 Bonus Payable January 2006</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2006 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2005 Bonus Payment</i></b> <i>[calculated from Jan. 2006 through Sept. 26, 2008 only]</i>
<b>\$176,708.00</b>	<b>2.667 Years</b>	<b>4.68%</b>	<b>\$23,200.66</b>
<b><i>Unpaid Portion of 2006 Bonus Payable January 2007</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2007 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2006 Bonus Payment</i></b> <i>[calculated from Jan. 2007 through Sept. 26, 2008 only]</i>
<b>\$149,778.18</b>	<b>1.667 Years</b>	<b>4.68%</b>	<b>\$12,004.96</b>
<b><i>Unpaid Portion of 2007 Bonus Payable January 2008</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2008 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2007 Bonus Payment</i></b> <i>[calculated from Jan. 2008 through Sept. 26, 2008 only]</i>
<b>\$181,708.00</b>	<b>.667 Years</b>	<b>4.41%</b>	<b>\$5,361.74</b>
<b>SUBTOTAL</b>			<b>\$ 40,567.35</b>

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

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**Claim 3. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement**

Because Washington Mutual failed to pay, in full, the bonus wages that claimant was entitled to under the Providian Agreement (as detailed above), Claimant had a vested right, prior to September 26, 2008, to a wage penalty equal to 30 days wages pursuant to Labor Code Sections 1201 and 1203. This wage penalty is equal to **\$43,475.67** [(Annual salary of \$240,000.00 + Annual bonus of \$281,708.00 divided by 360 days) x 30 days].

**Claim 4. Vested Right To Account Balance Under WMI Supplemental Executive Retirement Accumulation Plan (SERAP)**

Claimant was a participant in the Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan (SERAP) with an account balance of \$22,870.68 as of December 18, 2008.<sup>3</sup> WMILT paid a portion of this vested of balance on February 1, 2013. This payment was in the amount of \$5,653.25 only. Accordingly, Claimant is entitled to the remainder of his balance in his SERAP in the amount of **\$17,217.43** (\$22,870.68 balance minus payment of \$5,653.25).

**Claim 5. Severance Benefits Payment Pursuant to the Providian Agreement**

The Providian Agreement had a three-year term commencing on October 1, 2005 (when Washington Mutual acquired Providian) and was still in the effect on September 25, 2008. The Providian Agreement contains a severance provision which was triggered as a result of termination of Claimant's employment. Claimant was employed by Washington Mutual at the time its subsidiary bank was placed into receivership and its assets transferred to J.P. Morgan Chase. As a result, Claimant became an employee of J.P. Morgan Chase and his employment with Washington Mutual was terminated, triggering the vesting of the severance payment rights to Claimant.

Claimant is entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq., commensurate with the value of Claimant's severance benefits under Section 6(a) of the Providian Agreement, which provides in pertinent part:

**Section 6(a): Obligations of the Corporation upon Termination:** If during the Employment Period, the Corporation ... shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

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<sup>3</sup> See Exhibit C.

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(i) the Corporation shall pay to the Executive a lump sum in cash within 30 days of the Date of Termination the aggregate of the following amounts:

\*\*\*

B. the amount equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage [defined in this paragraph]. . . ., and

C. a separate lump-sum payment equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage and (3) the Retirement Contribution Percentage [defined], and

\*\*\*

The amount due Claimant is calculated by applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Briefly summarized, the amounts due to Claimant under the paragraphs quoted above yields the following figures:

<i><b>Severance Due = One Year Bonus + One Year Salary</b></i>	<u><i><b>Calculation</b></i></u>
<i>1x [Sec. 6(a)(i)(B) calculation is the number 1 x (the sum of below)]</i>	
<i><b>Annual Base Salary</b></i>	<b>\$ 240,000.00</b>
+	
<i><b>Annual Base Salary x Bonus Percentage*</b></i>	<b>\$ 338,049.00</b>
+	
<i>* Bonus percentage equals 140.85% [Percentage calculated under Section 6(a)(i)(B) of the Providian Agreement by dividing highest pre-merger bonus (\$281,708.00 in 2005) by highest pre-merger salary (\$200,000.00 in 2005)]</i>	
<i><b>Subtotal</b></i>	<b>\$ 578,049.00</b>

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<u><b>Retirement Contribution</b></u>	<u><b>Calculation</b></u>
<p><i>Ix</i> [Sec. 6(a)(i)(C) calculation is the number 1 x (the sum of below)</p>	
<b>Annual Base Salary</b>	\$ 240,000.00
+	
<b>Annual Base Salary x Bonus Percentage*</b>	\$ 338,049.00
+	
* Bonus percentage equals 140.85.%	
 <b>Retirement Percentage*</b>	 4.00 %
<p><i>X</i> * Retirement percentage equals 4.00 % [Retirement percentage as reported by Washington Mutual to other terminating employees as the highest in the three years prior to the merger Effective Date]</p>	
<b>Subtotal</b>	\$ 23,121.96
<b>Total Severance Subtotal</b>	\$ 601,170.96

**Claim 6. Lump Sum Payment Under The Washington Mutual Change In Control Agreement**

On December 17, 2007, Claimant executed a Change In Control Agreement drafted by Washington Mutual, Inc. to be effective for employees of its subsidiary corporations (“**WaMu CIC Agreement**”).<sup>4</sup> The WaMu CIC Agreement was in effect on September 26, 2008. The event of placing Washington Mutual Bank into receivership and selling its assets to J.P. Morgan

<sup>4</sup> See Exhibit D.

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Chase constitutes a change in control under Section 5(f)(5) of the WaMu CIC Agreement since this event resulted in “transfer of all or substantially all of the [Holding Company]’s assets to another Person . . . whether assisted or unassisted, voluntary or involuntary.” Further, because of the receivership and sale, Claimant became an employee of J.P. Morgan Chase, thereby terminating Claimant’s employment with Washington Mutual. This termination triggered severance benefits under section 5(c) and 5(d) which provide:

**Section 5(c): Termination.** . . . . If (i) Employee’s employment is terminated by Washington Mutual or its successor without “cause” (as defined below) upon or within two years after a Change in Control (as defined below) . . . and no cause for Washington Mutual to terminate exists, then:

1. Employee shall be entitled to receive, within five business days after the effective date of such termination . . . , from Washington Mutual or its successor, a lump sum equal to two times Employee’s annual compensation. Notwithstanding the preceding, the amount paid to employee under this subsection (1) shall be offset by any payment received by Employee from the Company or any acquired company pursuant to: (i) a severance or change of control agreement, arrangement or plan, with the exception of any such payment received more than two years before all of the conditions of this Section 5(c) were satisfied, or (ii) The Workers Authorization Relocation and Notification Act (WARN Act).

\*\*\*

**Section 5(d).** For purposes of Section 5(c), Employee’s “annual compensation” shall include all items of compensation provided by Washington Mutual other than the value of equity rights granted to Employee. Employee’s “annual compensation” shall include the greatest of (i) the total of Employee’s salary and target bonus for the calendar year in which the termination occurs (if established before the termination), (ii) Employee’s salary and actual bonus for the prior calendar year (annualized if Employee was not employed by Washington Mutual for the entire previous calendar year), or (iii) Employee’s salary and actual bonus for the calendar year immediately preceding the year in which the Change in Control occurred (annualized if Employee was not employed by Washington Mutual for the entire such calendar year). Employee’s “annual compensation” shall also include the amount of the contributions made or anticipated to have been made on Employee’s behalf to benefit plans for the calendar year in which the termination occurs, including without limitation contributions to pension plans and plans qualified under Section 125 of the Internal Revenue Code of 1986 (cafeteria plans), provided that “annual compensation” shall not include contributions to any plans that contain provisions that provide benefits, service credit, or accelerated vesting upon a change in control.

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The total value of the claim owed on the basis of this contract term is determined by the following equation based on the provisions cited above:

<i><b>Obligations Under Section 5(c)(1) and (d) of the Washington CIC Agreement</b></i>	<i><b><u>Lump Sum Calculation</u></b></i>
<i><b>“Lump Sum” Severance Payment [Sec. 5(c)(1) and (d)]</b></i>	<b>\$ 1,083,416.00</b>  <i>*Annual Compensation of \$240,000.00 (salary) + \$281,708.00 (Bonus guarantee) + \$20,000.00 (Benefits)<sup>5</sup> x 2</i>
<b>Subtotal</b>	<b>\$ 1,083,416.00</b>

As such, Claimant is entitled to a lump sum payment equal to **\$1,083,416.00**, pursuant to Sections 5(c)(1) and 5(d) of the WaMu CIC Agreement.

**Claim 7. Cash Long Term Incentive Award**

On February 6, 2008, Washington Mutual, Inc. provided written notice to Claimant that he was entitled to a Cash Long-Term Incentive Award (“**Cash LTI Award**”) as of January 22, 2009.<sup>6</sup> The total payable amount was \$112,500 which vested over three years, commencing on January 22, 2009 and ending on January 22, 2011. As stated above, the event of FDIC receivership and sale of the assets to J.P. Morgan Chase constituted a change in control event under the WaMu CIC Agreement and triggered an acceleration of the payment of the total award under the terms of the Cash LTI Award. Claimant seeks payment of the Cash LTI Award in the full amount of **\$112,500.00**.<sup>7</sup>

<sup>5</sup> The figure for Benefits is estimated based upon information presently available to Claimant. He has requested his payroll records from WMILT and reserves the right to seek the actual benefit compensation under the WMI CIC Agreement according to proof at the Hearing.

<sup>6</sup> See **Exhibit E**.

<sup>7</sup> On January 22, 2009, J.P. Morgan Chase paid Claimant \$37,500 (the value of one installment of the Cash LTI Award. Claimant asserts that WMILT is not entitled to an offset for this payment. Therefore, Claimant seeks the entire Cash LTI Award amount of \$112,500.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Richard Strauch**

**Social Security No. XXX-XX-2587**

**Claim 8. Special Retention Bonus**

On August 7, 2008, Washington Mutual, Inc. provided written notice to Claimant that he was entitled to a special retention bonus of **\$194,000** which was to vest and become fully payable on July 1, 2009.<sup>8</sup> As stated above, the event of bankruptcy constituted a change in control event under the WaMu CIC Agreement and triggered an acceleration of the payment of the retention bonus under the terms of the offer.

**Claim 9. Recovery of Attorneys' Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys' fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (*regardless of the outcome*). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys' fees and expenses in costs in connection with the Claim, the bankruptcy process, the confirmation this Objection and the Adversary Proceeding. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant's rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Similarly, Section 9 of the WaMu CIC Agreement permits the recovery of attorneys' fees, costs and expenses. Attorneys' fees, costs and expenses are also recoverable under ERISA and Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys' fees, costs and expenses, in an amount according to proof.

**Claim 10. Alternate Claim – Washington Mutual, Inc. Severance Plan**

To the extent that it is determined that a change in control did not occur or WMI is found not to be responsible for obligations under the WaMu Change in Control Agreement, then Claimant is entitled to severance pay in the amount of **\$73,846.15** pursuant to the WaMu Severance Plan.

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<sup>8</sup> See Exhibit F.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)****Claimant/Creditor: Richard Strauch****Social Security No. XXX-XX-2587****Total Claim Value Chart**

<b>Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 715,052.50</b>
<b>Claim 2. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement</b>	<b>\$ 40,567.35</b>
<b>Claim 3. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 43,475.67</b>
<b>Claim 4. Vested Rights To Supplemental Executive Retirement Accumulation Plan (SERAP) Account Balance</b>	<b>\$ 17,217.43</b>
<b>Claim 5. Severance Benefits Payment Pursuant to the Providian Agreement</b>	<b>\$ 601,170.96</b>
<b>Claim 6. Lump Sum Payment Under the Washington Mutual Change In Control Agreement</b>	<b>\$ 1,083,416.00</b>
<b>Claim 7. Cash Long Term Incentive Award</b>	<b>\$ 112,500.00</b>
<b>Claim 8. Special Retention Bonus</b>	<b>\$ 194,000.00</b>
<b>Claim 9. Attorneys' Fees, Costs and Expenses</b>	<b>According to Proof</b>
<b>Claim 10. Alternate Claim – WaMu Severance Plan</b>	<b>Alternate Only – per above</b>

**TOTAL CLAIM VALUE****\$2,807,399.91**

# Exhibit 8

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

UNITED STATES BANKRUPTCY COURT		District of Delaware	<b>PROOF OF CLAIM</b>
Name of Debtor: <b>Washington Mutual Inc.</b>		Case Number: <b>08-12229 (MFW)</b>	<b>COURT USE ONLY</b>
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.			
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>Luis P. Rodriguez</b>			
Name and address where notices should be sent: <b>c/o Stephan Kyle, Esq., Kyle Law Corporation 255 California Street, Suite 1300, San Francisco, CA 94111</b>		Telephone number: <b>(415) 839-8100</b> email: <b>skyle@kylelawcorp.com</b>	<input checked="" type="checkbox"/> Check this box if this claim amends a previously filed claim.  <b>Court Claim Number: 2149</b> <i>(If known)</i>  Filed on: <b>03/30/2009</b>
Name and address where payment should be sent (if different from above):		Telephone number: email:	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
<b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>1,156,030.88</u> *Plus attorneys' fees, costs & expenses If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.			
<b>2. Basis for Claim:</b> <u>See Attachment A</u> (See instruction #2)			
<b>3. Last four digits of any number by which creditor identifies debtor:</b>  4 3 8 0	<b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a)	<b>3b. Uniform Claim Identifier (optional):</b> _____ (See instruction #3b)	
<b>4. Secured Claim</b> (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.  <b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <b>Describe:</b>  <b>Value of Property:</b> \$ _____  <b>Annual Interest Rate</b> _____% <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		<b>Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:</b> \$ _____  <b>Basis for perfection:</b> _____  <b>Amount of Secured Claim:</b> \$ _____  <b>Amount Unsecured:</b> \$ _____	
<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.</b>  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B). <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).			
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.			
<b>6. Credits.</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)			

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

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

If the documents are not available, please explain: **WMILT is in possession of Claimants payroll information**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

**DEFINITIONS****INFORMATION****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Luis P. Rodriguez**

**Social Security No.: XXX-XX-4380**

**ATTACHMENT A – Proof of Claim**

Luis P. Rodriguez (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant remained employed by Washington Mutual up until the termination of Claimant’s employment following its subsidiary Bank’s placement into receivership. A table summarizing the calculations supporting Claimant’s total claim of **\$1,156,030.88, plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement**

In 2004, prior to the Providian-Washington Mutual Merger, Providian offered the Claimant and other key executives a Change of Control Employment Agreement (“**Providian Agreement**”) to provide job security and financial incentives to remain with the company in the event of corporate acquisition.<sup>1</sup> The Providian Agreement was signed on July 20, 2004, and the employment terms became effective at the time Washington Mutual acquired Providian on or about October 1, 2005.

Claimant is entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. that is commensurate with the value of Claimant’s bonus wages that were vested and unpaid prior to September 26, 2008, under Section 4(b)(ii) of the Providian Agreement. The section provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

\*\*\*

Arriving at the amount due Claimant is simply a matter of applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received the following total bonus amount:

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<sup>1</sup> See **Exhibit A**.



**Debtor: Washington Mutual, Inc. 08-12229 (MFW)****Claimant/Creditor: Luis P. Rodriguez****Social Security No.: XXX-XX-4380**

<u>January 2005 Bonus Amount<sup>2</sup></u>	<u>Calculation</u>
Cash	\$55,000.00
Stock Options	\$39,688.00
Restricted Stock	\$23,135.00
<b>Cash Bonus Total</b>	<b>\$117,823.00</b>

In calculating Claimant's annual cash bonus after the merger, Washington Mutual erred by failing to include the value of the equity previously awarded to Claimant. When the value of the equity award is properly included in the calculation, Claimant's guaranteed annual cash bonus under the Providian Agreement totals \$ 117,823.00. The amounts due to Claimant under the paragraphs quoted above yield the figures below, which are contrasted to the amounts Washington Mutual actually paid Claimant at the time of payment of the annual bonuses. Washington Mutual's calculation error resulted in the following underpayment of bonus wages of **\$263,782.79** as detailed below.

<u>Obligations Under Section 4(b)(ii) of the Providian Agreement</u>	<u>Amount Paid By WaMu</u>	<u>Actual Entitlement Per Section 4(b)(ii)</u>	<u>Unpaid Bonus Wage Balance</u>
<i>Annual Bonus for 2005 (as paid in Jan. 2006)</i>	\$55,000.00	\$117,823.00	\$62,823.00
<i>Annual Bonus for 2006 (as paid in Jan. 2007)</i>	\$67,203.64	\$117,823.00	\$50,619.36
<i>Annual Bonus for 2007 (as paid in Jan. 2008)</i>	\$55,000.00	\$117,823.00	\$62,823.00
<i>Pro-rated Annual Bonus for 2008 (pro-rated up to Sept. 26, 2008 only)</i>	\$ 0	\$87,517.43	\$ 87,517.43
	* 27,400.38 Paid by Chase in Jan. 2009 – No offset permitted under Providian Agreement		
<b>SUBTOTAL</b>			<b>\$263,782.79</b>

<sup>2</sup> See Exhibit B.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)****Claimant/Creditor: Luis P. Rodriguez****Social Security No.: XXX-XX-4380****Claim 2. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement**

As set forth above, Washington Mutual underpaid Claimant's bonus wages for the 2005 – 2007 performance years. Under Section 8 of the Providian Agreement, Claimant was entitled to interest at the applicable federal rate ("AFR") for the unpaid wage balance. This section provides:

**Section 8: Full Settlement.** ... The Corporation agrees to pay, to the full extent permitted by law, ... in each case interest, on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended ...

Therefore, Claimant had a vested right to interest on the unpaid bonus wages prior to September 26, 2008, as outlined below:

<b><i>Unpaid Portion of 2005 Bonus Payable January 2006</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2006 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2005 Bonus Payment</i></b> <i>[calculated from Jan. 2006 through Sept. 26, 2008 only]</i>
<b>\$62,823.00</b>	<b>2.667 Years</b>	<b>4.68%</b>	<b>\$8,248.29</b>
<b><i>Unpaid Portion of 2006 Bonus Payable January 2007</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2007 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2006 Bonus Payment</i></b> <i>[calculated from Jan. 2007 through Sept. 26, 2008 only]</i>
<b>\$50,619.36</b>	<b>1.667 Years</b>	<b>4.68%</b>	<b>\$4,057.22</b>
<b><i>Unpaid Portion of 2007 Bonus Payable January 2008</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2008 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2007 Bonus Payment</i></b> <i>[calculated from Jan. 2008 through Sept. 26, 2008 only]</i>
<b>\$62,823.00</b>	<b>.667 Years</b>	<b>4.41%</b>	<b>\$1,853.75</b>
<b>SUBTOTAL</b>			<b>\$14,159.26</b>

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Luis P. Rodriguez**

**Social Security No.: XXX-XX-4380**

**Claim 3. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement**

Because Washington Mutual failed to pay, in full, the bonus wages that claimant was entitled to under the Providian Agreement (as detailed above), Claimant had a vested right, prior to September 26, 2008, to a wage penalty equal to 30 days wages pursuant to Labor Code Sections 1201 and 1203. This wage penalty is equal to **\$26,268.86** [(Annual salary of \$197,403.26 + Annual bonus of \$117,823.00 divided by 360 days) x 30 days].

**Claim 4. Severance Benefits Payment Pursuant to the Providian Agreement**

The Providian Agreement had a three-year term commencing on October 1, 2005 (when Washington Mutual acquired Providian) and was still in the effect on September 26, 2008. The Providian Agreement contains a severance provision which was triggered as of September 26, 2008. Claimant was employed by Washington Mutual at the time Washington Mutual Bank was placed into receivership and its assets transferred to J.P. Morgan Chase. As a result, Claimant became an employee of J.P. Morgan Chase and his employment with Washington Mutual was effectively terminated, triggering the vesting of the severance payment rights to Claimant.

Claimant is entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. commensurate with the value of Claimant's severance benefits under Section 6(a) of the Providian Agreement, which provides in pertinent part:

**Section 6(a): Obligations of the Corporation upon Termination:** If during the Employment Period, the Corporation ... shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Corporation shall pay to the Executive a lump sum in cash within 30 days of the Date of Termination the aggregate of the following amounts:

\*\*\*

B. the amount equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage [defined in this paragraph]. ..., and

C. a separate lump-sum payment equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage and (3) the Retirement Contribution Percentage [defined], and

\*\*\*

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Luis P. Rodriguez**

**Social Security No.: XXX-XX-4380**

The amount due Claimant is calculated by applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Briefly summarized, the amounts due to Claimant under the paragraphs quoted above yields the following figures:

<b><i>Severance Due – One Year Bonus + One Year Salary</i></b>	<b><u>Calculation</u></b>
1x	<i>[Sec. 6(a)(i)(B) calculation is the number 1 x (the sum of below)</i>
<hr/>	
<b><i>Annual Base Salary</i></b>	<b>\$ 197,403.26</b>
+	
<b><i>Annual Base Salary x Bonus Percentage*</i></b>	<b>\$ 145,366.53</b>
<p><i>* Bonus percentage equals 73.64 % [Percentage calculated under Section 6(a)(i)(B) of the Providian Agreement by dividing highest pre-merger bonus (\$117,823 in 2005) by highest pre-merger salary (\$160,000 in 2005)]</i></p>	
<hr/>	
<b><i>Subtotal</i></b>	<b>\$342,769.79</b>

<b><i>Retirement Contribution</i></b>	<b><u>Calculation</u></b>
1x	<i>[Sec. 6(a)(i)(C) calculation is the number 1 x (the sum of below)</i>
<hr/>	
+ <b><i>Annual Base Salary</i></b>	<b>\$ 197,403.26</b>
<b><i>Annual Base Salary x Bonus Percentage*</i></b>	<b>\$ 145,366.53</b>
<p><i>* Bonus percentage equals 73.64.%</i></p>	

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)****Claimant/Creditor: Luis P. Rodriguez****Social Security No.: XXX-XX-4380**

<b>Retirement Percentage*</b>	<b>4.00 %</b>
X	

*\* Retirement percentage equals 4.00 %  
[Retirement percentage as reported by Washington Mutual to other terminating employees as the highest in the three years prior to the merger Effective Date]*

**Subtotal****\$ 13,710.79****Claim 5. Lump Sum Payment Under the Washington Mutual Change In Control Agreement**

On March 26, 2006, Claimant executed a Change In Control Agreement drafted by Washington Mutual, Inc. to be effective for employees of its subsidiary corporations (“**WaMu CIC Agreement**”).<sup>3</sup> The WaMu CIC Agreement was in effect on September 26, 2008. The event of placing Washington Mutual Bank into receivership and selling its assets to J.P. Morgan Chase constitutes a change in control under Section 5(f)(5) of the WaMu CIC Agreement since this event constituted a “transfer of all or substantially all of the [Holding Company]’s assets to another Person . . . whether assisted or unassisted, voluntary or involuntary.” Further, because of the receivership and sale, Claimant became an employee of J.P. Morgan Chase, thereby terminating Claimant’s employment with Washington Mutual. This termination triggered severance benefits under section 5(c) and 5(d) which provide:

**Section 5(c): Termination.** . . . . If (i) Employee’s employment is terminated by Washington Mutual or its successor without “cause” (as defined below) upon or within two years after a Change in Control (as defined below) . . . and no cause for Washington Mutual to terminate exists, then:

1. Employee shall be entitled to receive, within five business days after the effective date of such termination . . ., from Washington Mutual or its successor, a lump sum equal to one and a half times Employee’s annual compensation. Notwithstanding the preceding, the amount paid to employee under this subsection (1) shall be offset by any payment received by Employee from the Company or any acquired company pursuant to: (i) a severance or change of control agreement, arrangement or plan, with the exception of any such payment received more than two years before all of the conditions of this Section 5(c) were satisfied, or (ii) The Workers Authorization Relocation and Notification Act (WARN Act).

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<sup>3</sup> See **Exhibit C.**

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Luis P. Rodriguez**

**Social Security No.: XXX-XX-4380**

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**Section 5(d).** For purposes of Section 5(c), Employee’s “annual compensation” shall include all items of compensation provided by Washington Mutual other than the value of equity rights granted to Employee. Employee’s “annual compensation” shall include the greatest of (i) the total of Employee’s salary and target bonus for the calendar year in which the termination occurs (if established before the termination), (ii) Employee’s salary and actual bonus for the prior calendar year (annualized if Employee was not employed by Washington Mutual for the entire previous calendar year), or (iii) Employee’s salary and actual bonus for the calendar year immediately preceding the year in which the Change in Control occurred (annualized if Employee was not employed by Washington Mutual for the entire such calendar year). Employee’s “annual compensation” shall also include the amount of the contributions made or anticipated to have been made on Employee’s behalf to benefit plans for the calendar year in which the termination occurs, including without limitation contributions to pension plans and plans qualified under Section 125 of the Internal Revenue Code of 1986 (cafeteria plans), provided that “annual compensation” shall not include contributions to any plans that contain provisions that provide benefits, service credit, or accelerated vesting upon a change in control.

\*\*\*

The total value of the claim owed on the basis of this contract term is determined by the following equation based on the provisions cited above:

<i><b>Obligations Under Section 5(c)(1) and (d) of the Washington CIC Agreement</b></i>	<i><b><u>Lump Sum Calculation</u></b></i>
<i><b>“Lump Sum” Severance Payment</b></i> <i>[Sec. 5(c)(1) and (d)]</i>	<b>\$ 495,339.39</b>  <i>*Annual Compensation of \$197,403.26 (Salary) + \$117,823 (Bonus guarantee) + \$15,000 (Benefits)<sup>4</sup> x 1.5</i>
<i><b>Subtotal</b></i>	<b>\$ 495,339.39</b>

<sup>4</sup> The figure for Benefits is estimated based upon information presently available to Claimant. She has requested his payroll records from WMILT and reserves the right to seek the actual benefit compensation under the WMI CIC Agreement according to proof at the Hearing.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Luis P. Rodriguez**

**Social Security No.: XXX-XX-4380**

As such, Claimant is entitled to a lump sum payment equal to **\$495,339.39**, pursuant to Sections 5(c)(1) and 5(d) of the WaMu CIC Agreement.

**Claim 6. Recovery of Attorneys' Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys' fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (*regardless of the outcome*). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys' fees and expenses in costs in connection with the monies owed to him under the Providian Agreement, the Claim, the bankruptcy process, the Plan confirmation, and the Objection. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant's rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Similarly, Section 9 of the WaMu CIC Agreement permits the recovery of attorneys' fees, costs and expenses. Attorneys' fees, costs and expenses are also recoverable under ERISA and Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys' fees, costs and expenses, in an amount according to proof.

**Claim 7. Alternate Claim – Washington Mutual, Inc. Severance Plan**

To the extent that it is determined that a change in control did not occur or WMI is found not to be responsible for the obligations under the WaMu Change in Control Agreement, then Claimant is entitled to severance pay in the amount of **\$472,839.39** pursuant to the WaMu Severance Plan.

○○○

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Luis P. Rodriguez**

**Social Security No.: XXX-XX-4380**

**Total Claim Value Chart**

<b>Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 263,782.79</b>
<b>Claim 2. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement</b>	<b>\$ 14,159.26</b>
<b>Claim 3. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 26,268.86</b>
<b>Claim 4. Severance Benefits Payment Pursuant to the Providian Agreement</b>	<b>\$ 356,480.58</b>
<b>Claim 5. Lump Sum Payment Under the Washington Mutual Change In Control Agreement</b>	<b>\$ 495,339.39</b>
<b>Claim 6. Attorneys' Fees, Costs and Expenses</b>	<b>According to Proof</b>
<b>Claim 7. Alternate Claim – WaMu Severance Plan</b>	<b>Alternate Only – per above</b>

<b>TOTAL CLAIM VALUE</b>	<b>\$1,156,030.88</b>
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# Exhibit 9



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

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

If the documents are not available, please explain: **WMILT is in possession of Claimants SERAP information**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

**DEFINITIONS****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**INFORMATION****Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Kathy Yeu**

**Social Security No.: XXX-XX-1556**

**ATTACHMENT A – Proof of Claim**

Kathy H. Yeu (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant was continuously employed by Washington Mutual through her termination date of January 31, 2008. A table summarizing the calculations supporting Claimant’s total claim of **\$1,330,957.10, plus SERAP balance, attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**CLAIMS BASED ON RIGHTS VESTING PRIOR TO SEPTEMBER 25, 2008**

**Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement**

In 2004, prior to the Providian-Washington Mutual Merger, Providian offered the Claimant and other key executives a Change of Control Employment Agreement (“**Providian Agreement**”) to provide job security and financial incentives to remain with the company in the event of corporate acquisition.<sup>1</sup> The Providian Agreement was signed on July 15, 2004, and the employment terms became effective at the time Washington Mutual acquired Providian on or about October 1, 2005.

Claimant is entitled to and hereby claims a pro rata share of the value of the defaulted company pursuant to 11 U.S.C. § 101, et seq. that is commensurate with the value of Claimant’s bonus wages that were vested and unpaid prior to September 25, 2008, under Section 4(b)(ii) of the Providian Agreement. The section provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

\*\*\*

Arriving at the amount due Claimant is simply a matter of applying her individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received the following total bonus amount:

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<sup>1</sup> See **Exhibit A**.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Kathy Yeu**

**Social Security No.: XXX-XX-1556**

<b><u>January 2005 Bonus Amount<sup>2</sup></u></b>	<b><u>Calculation</u></b>
<b>Cash</b>	<b>\$ 180,000.00</b>
<b>Stock Options</b>	<b>\$ 179,498.00</b>
<b>Restricted Stock</b>	<b>\$ 99,150.00</b>
<b>Cash Bonus Total</b>	<b>\$458,648.00</b>

In calculating Claimant's annual cash bonus after the merger, Washington Mutual erred by failing to include the value of the equity previously awarded to Claimant. When the value of the equity award is properly included in the calculation, Claimant's guaranteed annual cash bonus under the Providian Agreement totals \$458,648.00. The amounts due to Claimant under the paragraphs quoted above yield the figures below, which are contrasted to the amounts Washington Mutual actually paid Claimant at the time of payment of the annual bonuses. Washington Mutual's calculation error resulted in the following underpayment of bonus wages **\$835,944.00** as detailed below.

<b><u>Obligations Under Section 4(b)(ii) of the Providian Agreement</u></b>	<b><u>Amount Paid By WAMU</u></b>	<b><u>Actual Entitlement Per Section 4(b)(ii)</u></b>	<b><u>Unpaid Bonus Wage Balance</u></b>
<b>Annual Bonus for 2005 (as paid in Jan. 2006)</b>	<b>\$ 180,000.00</b>	<b>\$ 458,648.00</b>	<b>\$ 278,648.00</b>
<b>Annual Bonus for 2006 (as paid in Jan. 2007)</b>	<b>\$180,000.00</b>	<b>\$ 458,648.00</b>	<b>\$278,648.00</b>
<b>Annual Bonus for 2007 (as paid in Jan. 2008)</b>	<b>\$ 180,000.00</b>	<b>\$ 458,508.00</b>	<b>\$ 278,648.00</b>
<b>Subtotal</b>			<b>\$835,944.00</b>

<sup>2</sup> See Exhibit B.

**Claim 2. Termination Benefits Payment Pursuant to the Providian Agreement**

The Providian Agreement had a three-year term commencing on October 1, 2005 (when Washington Mutual acquired Providian) and was in effect on January 31, 2008, when claimant was terminated. The Providian Agreement contains a severance provision which was triggered as of January 31, 2008. Claimant terminated her employment with Washington Mutual for Good Reason triggering the vesting of the severance payment rights to Claimant. However, Washington Mutual miscalculated the amount owed to Claimant and underpaid her as set forth below.

Claimant is entitled to and hereby claims a pro rata share of the value of the defaulted company held by the FDIC pursuant to 11 U.S.C. § 101, et seq. that is commensurate with the value of Claimant's severance benefits under Section 6(a) of the Providian Agreement, which provides in pertinent part:

**Section 6(a): Obligations of the Corporation upon Termination:** If during the Employment Period, the Corporation ... shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Corporation shall pay to the Executive a lump sum in cash within 30 days of the Date of Termination the aggregate of the following amounts:

A. the sum of (1) the Executive's Base Salary through the Date of Termination, (2) the product of (x) the Annual Bonus and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365, and (3) any compensation previously deferred by the Executive under non-qualified plans ... and the value of any unused paid time off ... (the "Accrued Obligations"), and

B. the amount equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage [defined in this paragraph]. ..., and

C. a separate lump-sum payment equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage and (3) the Retirement Contribution Percentage [defined]. . .

\*\*\*

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Kathy Yeu**

**Social Security No.: XXX-XX-1556**

The amount due Claimant is calculated by applying her individual financial data to the formulae specified in the Providian Agreement and calculating the result. Briefly summarized, the amounts due to Claimant under the paragraphs quoted above yields the following figures:

<b><u>Obligations Under Section 6(a)(i)(A) of the Providian Agreement</u></b>	<b><u>Amount Paid By WAMU</u></b>	<b><u>Actual Entitlement Per Section 6(a)(i)(A)</u></b>	<b><u>Unpaid Prorated Bonus Wage Balance</u></b>
<b><i>Prorated Annual Bonus for 2008 (annual bonus (\$458,648.00) x percent of year employed (31/365 or 8.50% ))</i></b>	<b>\$ 15,287.67</b>	<b>\$ 38,985.08</b>	<b>\$ 23,697.41</b>
<b><i>Subtotal</i></b>			<b>\$23,697.41</b>
<b><u>Severance Due = One Year Bonus + One Year Salary</u></b>	<b><u>Amount Paid By WAMU<sup>3</sup></u></b>	<b><u>Actual Entitlement Per Section 6(a)(i)</u></b>	<b><u>Unpaid Severance Balance</u></b>
<b><i>1x [Sec. 6(a)(i)(B) calculation is the number 1 x (the sum of below)]</i></b>			
<b><i>Annual Base Salary</i></b>	<b>\$ 240,000.00</b>	<b>\$ 240,000.00</b>	<b>\$0</b>
<b>+</b>			
<b><i>Annual Base Salary x Bonus Percentage*</i></b>	<b>\$ 196,361.85</b>	<b>\$ 500,338.72</b>	<b>\$303,976.87</b>
<b><i>* Bonus percentage equals 208.47% [Percentage calculated under Section 6(a)(i)(B) of the Providian Agreement by dividing highest pre-merger bonus (\$ 458,648.00 in 2005) by highest pre-merger salary (\$ 220,002.00 in 2005)]</i></b>			
<b><i>Subtotal</i></b>			<b>\$303,976.87</b>

<sup>3</sup> See Exhibit C.



**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Kathy Yeu**

**Social Security No.: XXX-XX-1556**

	<b><u>Retirement Contribution</u></b> <i>[Sec. 6(a)(i)(C) calculation is the number 1 x (the sum of below)]</i>	<b><u>Amount Paid By WAMU</u></b>	<b><u>Actual Entitlement Per Section 6(a)(i)</u></b>	<b><u>Unpaid Retirement Contribution Balance</u></b>
<b>1x</b>	<b>Annual Base Salary</b>	<b>\$240,000.00</b>	<b>\$240,000.00</b>	<b>\$0</b>
<b>+</b>	<b>Annual Base Salary x Bonus Percentage**</b> <i>Bonus percentage equals 208.47%</i>	<b>\$196,361.85</b>	<b>\$500,338.72</b>	<b>\$ 303,976.87</b>
<b>X</b>	<b>Retirement Percentage**</b> <i>Retirement percentage equals 4.00 %</i> <i>[**Retirement percentage as reported by Washington Mutual to other terminating employees as the highest in the three years prior to the merger Effective Date]</i>	<b>4.00%</b>	<b>4.00%</b>	
<b>Subtotal</b>		<b>\$17,454.47</b>	<b>\$29,613.55</b>	<b>\$ 12,159.08</b>
<b>Total Termination Benefits Subtotal</b>				<b>\$ 339,833.36</b>

**Claim 3. Vested Rights To Accrued Interest Up To September 25, 2008, On Unpaid Bonus Wages And Unpaid Termination Benefits Under The Providian Agreement**

As set forth above, Washington Mutual underpaid Claimant’s bonus wages for the 2005 - 2007 performance years and underpaid his termination benefit entitlement at the time of the termination. Under Section 8 of the Providian Agreement, Claimant was entitled to interest at the applicable federal rate (“AFR”) on these unpaid balances. This section provides:

**Section 8: Full Settlement.** ... The Corporation agrees to pay, to the full extent permitted by law, ... in each case interest, on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended ...

Therefore, Claimant had a vested right to interest on the unpaid bonus wages prior to September 25, 2008, as outlined below:

Debtor: Washington Mutual, Inc. 08-12229 (MFW)

Claimant/Creditor: Kathy Yeu

Social Security No.: XXX-XX-1556

<p><b><i>Unpaid Portion of 2005 Bonus Payable January 2006</i></b> [Sec. 8]</p>	<p><b><i>No. of Years Delayed</i></b> [Jan. 2006 – Sept. 2008]</p>	<p><b><i>Long-Term AFR/ Compounded Semi- Annually</i></b></p>	<p><b><i>Unpaid Interest Accrued On The Delayed Bonus Payment</i></b>  [calculated from Jan. 2006 through Sept. 25, 2008 only]</p>
<p><b>\$ 278,648.00</b></p>	<p><b>2.667 Years</b></p>	<p><b>4.68%</b></p>	<p><b>\$ 36,584.85</b></p>
<p><b><i>Unpaid Portion of 2006 Bonus Payable January 2007</i></b> [Sec. 8]</p>	<p><b><i>No. of Years Delayed</i></b> [Jan. 2007 – Sept. 2008]</p>	<p><b><i>Long-Term AFR/ Compounded Semi- Annually</i></b></p>	<p><b><i>Unpaid Interest Accrued On The Delayed Bonus Payment</i></b>  [calculated from Jan. 2007 through Sept. 25, 2008 only]</p>
<p><b>\$ 278,648.00</b></p>	<p><b>1.667 Years</b></p>	<p><b>4.68%</b></p>	<p><b>\$ 22,334.08</b></p>
<p><b><i>Unpaid Portion of 2007 Bonus Payable January 2008</i></b> [Sec. 8]</p>	<p><b><i>No. of Years Delayed</i></b> [Jan. 2008 – Sept. 2008]</p>	<p><b><i>Long-Term AFR/ Compounded Semi- Annually</i></b></p>	<p><b><i>Unpaid Interest Accrued On The Delayed Bonus Payment</i></b>  [calculated from Jan. 2008 through Sept. 25, 2008 only]</p>
<p><b>\$ 278,648.00</b></p>	<p><b>.667 Years</b></p>	<p><b>4.41%</b></p>	<p><b>\$ 8,222.21</b></p>
<p><b><i>Unpaid Portion of Termination Benefits Payable January, 2008</i></b>  [Sec. 8]</p>	<p><b><i>No. of Years Delayed</i></b> [Jan. 2008 – Sept. 2008]</p>	<p><b><i>Long-Term AFR/ Compounded Semi- Annually</i></b></p>	<p><b><i>Unpaid Interest Accrued On The Delayed Termination Benefits Payment</i></b>  [calculated from Jan. 2008 through Sept. 25, 2008 only]</p>
<p><b>\$ 339,833.60</b></p>	<p><b>.667 Years</b></p>	<p><b>4.417%</b></p>	<p><b>\$ 10,027.64</b></p>
<p><b><i>Subtotal</i></b></p>			<p><b>\$ 77,168.78</b></p>

**Claim 4. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement**

Because Washington Mutual failed to pay, in full, the bonus wages and termination benefits that claimant was entitled to under the Providian Agreement (as detailed above), Claimant had a vested right, prior to September 26, 2008, to a wage penalty equal to 30 days wages pursuant to Labor Code Sections 1201 and 1203. This wage penalty is equal to **\$ 58,220.67** [(Annual salary of \$240,000.00 + Annual bonus of \$458,648.00 divided by 360 days) x 30 days].

**Claim 5. Vested Right To Account Balance Under WMI Supplemental Executive Retirement Accumulation Plan (SERAP)**

Claimant was a participant in the Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan (SERAP) with a vested account balance on January 31, 2008. Claimant is informed and believes that WMILT paid only a portion of this vested of balance at the time of her termination. Specifically, a SERAP balance of **\$19,790.29** was deemed forfeited by WMI at the time of termination.<sup>4</sup> Pursuant to Section 6(a)(i)(D) of the Providian Agreement, Claimant was entitled to payment of “an amount equal to the unvested portion of the qualified and unqualified retirement contribution account in addition to any vested amounts due under the retirement plans of the Corporation.” Accordingly, Claimant is entitled to the remainder of her balance in her SERAP as of January 31, 2008.<sup>5</sup>

**Claim 6. Recovery of Attorneys’ Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys’ fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (**regardless of the outcome**). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys’ fees and expenses in costs in connection with the monies owed to her under the Providian Agreement, the Claim, the bankruptcy process, the Plan confirmation, and the Objection. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant’s rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Attorneys’ fees, costs and expenses are also recoverable under ERISA and under Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys’ fees, costs and expenses, in an amount according to proof.

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<sup>4</sup> See **Exhibit D**.

<sup>5</sup> Claimant has requested further SERAP balance and payment information and documentation from WMILT, but none has been provided by WMILT to date. Claimant reserves the right to claim any additional amounts owed to her that are supported by the documentation.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Kathy Yeu**

**Social Security No.: XXX-XX-1556**

**Total Claim Value Chart**

<b><i>Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement</i></b>	<b><i>\$ 835,944.00</i></b>
<b><i>Claim 2. Severance Benefits Payment Pursuant to the Providian Agreement</i></b>	<b><i>\$ 339,833.36</i></b>
<b><i>Claim 3. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement</i></b>	<b><i>\$ 77,168.78</i></b>
<b><i>Claim 4. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement</i></b>	<b><i>\$ 58,220.67</i></b>
<b><i>Claim 5. Vested Rights To Supplemental Executive Retirement Accumulation Plan (SERAP) Account Balance</i></b>	<b><i>\$ 19,790.29</i></b>
<b><i>Claim 6. Attorneys' Fees, Costs and Expenses</i></b>	<b><i>According to Proof</i></b>

***TOTAL CLAIM VALUE***

***\$1,330,957.10***

# Exhibit 10

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

UNITED STATES BANKRUPTCY COURT		District of Delaware	<b>PROOF OF CLAIM</b>						
Name of Debtor: <b>Washington Mutual Inc.</b>		Case Number: <b>08-12229 (MFW)</b>	<p style="text-align: center;"><b>COURT USE ONLY</b></p> <input checked="" type="checkbox"/> Check this box if this claim amends a previously filed claim.  <b>Court Claim Number:</b> <u>117</u> <i>(If known)</i>  <b>Filed on:</b> <u>12/17/2008</u>						
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.									
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>Michele S. Grau-Iversen</b>									
Name and address where notices should be sent: <b>c/o Stephan Kyle, Esq., Kyle Law Corporation 255 California Street, Suite 1300, San Francisco, CA 94111</b>		Telephone number: <b>(415) 839-8100</b> email: <b>skyle@kylelawcorp.com</b>	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.						
Name and address where payment should be sent (if different from above):  Telephone number:                                  email:									
<b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>28,954.97</u> *Plus attorneys' fees, costs & expenses If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.									
<b>2. Basis for Claim:</b> <u>See Attachment A</u> (See instruction #2)									
<b>3. Last four digits of any number by which creditor identifies debtor:</b>  8    4    3    9	<b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a)	<b>3b. Uniform Claim Identifier (optional):</b> _____ (See instruction #3b)							
<b>4. Secured Claim</b> (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.  <b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <b>Describe:</b>  <b>Value of Property:</b> \$ _____  <b>Annual Interest Rate</b> _____ % <input type="checkbox"/> Fixed    or <input type="checkbox"/> Variable (when case was filed)		<b>Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:</b> \$ _____  <b>Basis for perfection:</b> _____  <b>Amount of Secured Claim:</b> \$ _____  <b>Amount Unsecured:</b> \$ _____							
<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.</b>  <table style="width:100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).                 </td> <td style="width: 33%; vertical-align: top;"> <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).                 </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).                 </td> </tr> <tr> <td style="vertical-align: top;"> <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).                 </td> <td style="vertical-align: top;"> <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).                 </td> <td style="vertical-align: top;"> <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).                 </td> </tr> </table> <p style="text-align: right;"><b>Amount entitled to priority:</b> \$ _____</p>				<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).	<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).							
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).							
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.									
<b>6. Credits.</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)									

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

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

If the documents are not available, please explain: **WMILT is in possession of Claimant's Personnel and Payroll Records**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

## DEFINITIONS

**Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

## INFORMATION

**Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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



**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Michele Grau-Iversen**

**Social Security No. XXX-XX-8439**

**ATTACHMENT A – Proof of Claim**

Michele Grau-Iversen (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant remained employed by Washington Mutual up through and including the termination of Claimant’s employment following its subsidiary Bank’s placement into receivership. A table summarizing the calculations supporting Claimant’s total claim of **\$28,954.97, plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**Claim 1. Vested Right To Account Balance Under WMI Supplemental Executive Retirement Accumulation Plan (SERAP)**

Claimant was a participant in the Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan (SERAP) with an account balance of \$38,606.63 as of September 26, 2008<sup>1</sup>. WMILT paid a portion of this vested of balance in March, 2012. This payment was in the amount of \$9,651.66 only.

Upon the merger of Providian into Washington Mutual, the SERAP was amended by the Amendment No. 1 adopted September 30, 2005 (the “Amendment No. 1”) to provide for plan entry dates and prior service credits.<sup>2</sup> Pursuant to Amendment No. 1, the definition of “Executive Service” was amended by adding the following language to the end of Section 2.20:

Employees who on September 30, 2005 were employed by Providian Financial Corporation, Providian National Bank or any affiliate or subsidiary thereof and who on October 1, 2005 became employed by the Employer shall, after April 1, 2006, be credited with Service for service with Providian Financial Corporation, Providian Nation Bank or their affiliates or subsidiaries, but only to the extent that such service occurred after December 31, 2003.

Pursuant to Amendment No. 1, Claimant was entitled to up to two (2) additional years of service (for their service with Providian) dating back to Jan. 1, 2004. Yet, the calculations made by WMI, as represented to Claimant in the Notice on March 11, 2009 signed by Robert Williams on behalf of WMI (the “Notice”) as being reflected on the books and records of the Debtor, failed to take into account these additional years of Executive Service for the Claimants.<sup>3</sup>

In addition, pursuant to Section 6(a)(i)(D) of the Providian Agreement, Claimant was entitled to a payment equal to the unvested portion of the qualified and non-qualified retirement contribution account, in addition to any vested amounts due under such plans. This would include the unvested balances under the SERAP.

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<sup>1</sup> See **Exhibit A**.

<sup>2</sup> See **Exhibit B**.

<sup>3</sup> See **Exhibit C**.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Michele Grau-Iversen**

**Social Security No. XXX-XX-8439**

Accordingly, Claimant is entitled to the remainder of her balance in the SERAP in the amount of \$28,954.97 (\$38,606.63 balance minus payment of \$9,651.66).

**Claim 2. Recovery of Attorneys’ Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys’ fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (*regardless of the outcome*). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys’ fees and expenses in costs in connection with the Claim, the bankruptcy process, the Objection and the Adversary Proceeding. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant’s rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Similarly, attorneys’ fees, costs and expenses are also recoverable under ERISA and Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys’ fees, costs and expenses, in an amount according to proof.

○○○

**Total Claim Value Chart**

*Claim 1. Vested Rights To Supplemental Executive Retirement Accumulation Plan (SERAP) Account Balance* **\$ 28,954.97**

*Claim 2. Attorneys’ Fees, Costs and Expenses* **According to Proof**

<b>TOTAL CLAIM VALUE</b>	<b>\$28,954.97</b>
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# Exhibit 11



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

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

If the documents are not available, please explain: **WMILT is in possession of Claimant's Personnel and Payroll Records**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

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

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

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**INFORMATION****Acknowledgment of Filing of Claim**

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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.

**ATTACHMENT A – Proof of Claim**

Michele Grau-Iversen (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant remained employed by Washington Mutual up through and including the termination of Claimant’s employment following its subsidiary Bank’s placement into receivership. A table summarizing the calculations supporting Claimant’s total claim of **\$990,961.73, plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement**

In 2004, prior to the Providian-Washington Mutual Merger, Providian offered the Claimant and other key executives a Change of Control Employment Agreement (“**Providian Agreement**”) to provide job security and financial incentives to remain with the company in the event of corporate acquisition.<sup>1</sup> The Providian Agreement was signed on January 27, 2004, and the employment terms became effective at the time Washington Mutual acquired Providian on or about October 1, 2005.

Claimant would be entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. that is commensurate with the value of Claimant’s bonus wages that were vested and unpaid prior to September 26, 2008, under Section 4(b)(ii) of the Providian Agreement. The section provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

\*\*\*

Arriving at the amount due Claimant is simply a matter of applying her individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received the following total bonus amount:

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<sup>1</sup> See **Exhibit A**.

<u>January 2005 Bonus Amount<sup>2</sup></u>	<u>Calculation</u>
<i>Cash</i>	<i>\$225,000.00</i>
<i>Stock Options</i>	<i>\$147,026.00</i>
<i>Restricted Stock</i>	<i>\$ 80,973.00</i>
<b><i>Cash Bonus Total</i></b>	<b><i>\$452,999.00</i></b>

In calculating Claimant’s annual cash bonus after the merger, Washington Mutual erred by failing to include the value of the equity previously awarded to Claimant. When the value of the equity award is properly included in the calculation, Claimant’s guaranteed annual cash bonus under the Providian Agreement totals \$452,999.00. The amounts due to Claimant under the paragraphs quoted above yield the figures below, which are contrasted to the amounts Washington Mutual actually paid Claimant at the time of payment of the annual bonuses. Washington Mutual’s calculation error resulted in the following underpayment of bonus wages **\$647,786.60** as detailed below.

<u>Obligations Under Section 4(b)(ii) of the Providian Agreement</u>	<u>Amount Paid By WaMu</u>	<u>Actual Entitlement Per Section 4(b)(ii)</u>	<u>Unpaid Bonus Wage Balance</u>
<i>Annual Bonus for 2005 (as paid in Jan. 2006)</i>	<i>\$225,000.00</i>	<i>\$452,999.00</i>	<i>\$227,999.00</i>
<i>Annual Bonus for 2006 (as paid in Jan. 2007)</i>	<i>\$286,410.40</i>	<i>\$452,999.00</i>	<i>\$166,588.60</i>
<i>Annual Bonus for 2007 (as paid in Jan. 2008)</i>	<i>\$199,800.00</i>	<i>\$452,999.00</i>	<i>\$253,199.00</i>
<b>SUBTOTAL</b>			<b>\$647,786.60</b>

<sup>2</sup> See Exhibit B.



**Claim 2. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement**

As set forth above, Washington Mutual underpaid Claimant’s bonus wages for the 2005 – 2007 performance years. Under Section 8 of the Providian Agreement, Claimant was entitled to interest at the applicable federal rate (“AFR”) for the unpaid wage balance. This section provides:

**Section 8: Full Settlement.** ... The Corporation agrees to pay, to the full extent permitted by law, ... in each case interest, on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended ...

Therefore, Claimant had a vested right to interest on the unpaid bonus wages prior to September 26, 2008, as outlined below:

<b><i>Unpaid Portion of 2005 Bonus Payable January 2006 [Sec. 8]</i></b>	<b><i>No. of Years Delayed [Jan. 2006 – Sept. 2008]</i></b>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2005 Bonus Payment [calculated from Jan. 2006 through Sept. 26, 2008 only]</i></b>
<b>\$227,999.00</b>	<b>2.667 Years</b>	<b>4.68%</b>	<b>\$29,934.93</b>
<b><i>Unpaid Portion of 2006 Bonus Payable January 2007 [Sec. 8]</i></b>	<b><i>No. of Years Delayed [Jan. 2007 – Sept. 2008]</i></b>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2006 Bonus Payment [calculated from Jan. 2007 through Sept. 26, 2008 only]</i></b>
<b>\$166,588.60</b>	<b>1.667 Years</b>	<b>4.68%</b>	<b>\$13,352.34</b>
<b><i>Unpaid Portion of 2007 Bonus Payable January 2008 [Sec. 8]</i></b>	<b><i>No. of Years Delayed [Jan. 2008 – Sept. 2008]</i></b>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2007 Bonus Payment [calculated from Jan. 2008 through Sept. 26, 2008 only]</i></b>
<b>\$253,199.00</b>	<b>.667 Years</b>	<b>4.41%</b>	<b>\$7,471.27</b>
<b>SUBTOTAL</b>			<b>\$ 50,758.55</b>

**Claim 3. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement**

Because Washington Mutual failed to pay, in full, the bonus wages that claimant was entitled to under the Providian Agreement (as detailed above), Claimant had a vested right, prior to September 26, 2008, to a wage penalty equal to 30 days wages pursuant to Labor Code Sections 1201 and 1203. This wage penalty is equal to **\$71,416.58** [(Annual salary of \$404,000.00 + Annual bonus of \$452,999.00 divided by 360 days) x 30 days].

**Claim 4. Special Retention Bonus**

On February 13, 2008, Washington Mutual, Inc. provided written notice to Claimant that she was entitled to a special retention bonus in the amount of \$934,000.00 which was to vest and become fully payable on January 31, 2010.<sup>3</sup> On August 7, 2008, Washington Mutual, Inc. provided Claimant with a replacement Special Bonus Opportunity (the “Replacement Special Retention Bonus”) that indicated that it was intended to supersede “the bonus described in the agreement dated February 13, 2008 (“Prior Bonus Agreement”) *as well as the Providian Change in Control Agreement that you signed (“Providian Agreement”)*. According to the Replacement Special Retention Bonus, Claimant was entitled to a special retention bonus in the total amount of \$847,000.00. Of this total amount, \$626,000 became fully vested and was paid on or about September 1, 2008. The remaining **\$221,000** was to vest and become fully payable on July 1, 2009.<sup>4</sup> As stated above, the event of bankruptcy constituted a change in control event under the WaMu CIC Agreement and triggered an acceleration of the payment of the retention bonus under the terms of the Replacement Special Retention Bonus.

**Claim 5. Recovery of Attorneys’ Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys’ fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (*regardless of the outcome*). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys’ fees and expenses in costs in connection with the Claim, the bankruptcy process, the confirmation, the Objection and the Adversary Proceeding. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant’s rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Similarly, Section 9 of the WaMu CIC Agreement permits the recovery of attorneys’ fees, costs and expenses. Attorneys’ fees, costs and expenses are also recoverable under Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys’ fees, costs and expenses, in an amount according to proof.

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<sup>3</sup> See Exhibit C.

<sup>4</sup> See Exhibit D.

**Claim 6.      Alternate Claims - Severance Benefits Payment and Accrued 2008 Bonus Payment Pursuant to the Providian Agreement**

To the extent that it is determined that WMI is found not to be the party responsible for the obligations under the Replacement Special Bonus Opportunity, then Claimant is entitled to additional compensation pursuant to the Providian Agreement as follows:

**A. Alternate Claim - Accrued Guaranteed Bonus Payment Pursuant to the Providian Agreement**

As set forth above, the Providian Agreement entitled Claimant to an annual bonus, paid in cash, equal to \$452,999.00. The Replacement Special Bonus Opportunity intended to replace and supersede (as of 2008) the benefits payable under the Providian Agreement. If the Replacement Special Bonus Opportunity is determined not to be a contractual obligation of WMI, then Claimant would be entitled to a bonus payment, pursuant to the Providian Agreement, as pro-rated up to September 26, 2008, as follows:

<u>Obligations Under Section 4(b)(ii) of the Providian Agreement</u>	<u>Amount Paid By WaMu</u>	<u>Actual Entitlement Per Section 4(b)(ii)</u>	<u>Unpaid Bonus Wage Balance</u>
<i>Pro-rated Annual Bonus for 2008 (pro-rated up to Sept. 26, 2008 only)</i>	\$0*	\$332,637.17	\$332,637.17
	<i>* 110K Paid by Chase in Jan. 2009- No offset permitted under Providian Agreement</i>		

<b><i>Pro-rated Bonus Payment</i></b>	<b><i>\$332,637.17</i></b>
---------------------------------------	----------------------------

**B. Alternate Claim - Severance Benefits Payment Pursuant to the Providian Agreement**

The Providian Agreement had a three-year term commencing on October 1, 2005 (when Washington Mutual acquired Providian) and was still in the effect on September 25, 2008. The Providian Agreement contains a severance provision which was triggered as a result of termination of Claimant's employment. Claimant was employed by Washington Mutual at the time Washington Mutual Bank was placed into receivership and its assets transferred to J.P. Morgan Chase. As a result, Claimant became an employee of J.P. Morgan Chase and her employment with Washington Mutual was effectively terminated, triggering the vesting of the severance payment rights to Claimant.

If WMI is deemed not to be a contracting party to the Replacement Special Bonus Opportunity, the rights and benefits under the Providian Agreement would remain intact, since

WMI is the stated successor to the Providian Agreement. These rights and benefits include severance benefits under Section 6(a) of Providian Agreement, which provides in pertinent part:

**Section 6(a): Obligations of the Corporation upon Termination:** If during the Employment Period, the Corporation ... shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Corporation shall pay to the Executive a lump sum in cash within 30 days of the Date of Termination the aggregate of the following amounts:

\*\*\*

B. the amount equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage [defined in this paragraph]. ..., and

C. a separate lump-sum payment equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage and (3) the Retirement Contribution Percentage [defined], and

\*\*\*

The amount due Claimant is calculated by applying her individual financial data to the formulae specified in the Providian Agreement and calculating the result. Briefly summarized, the amounts due to Claimant under the paragraphs quoted above yields the following figures:

	<b><u>Severance Due = One Year Bonus + One Year Salary</u></b>	<b><u>Calculation</u></b>
1x	<i>[Sec. 6(a)(i)(B) calculation is the number 1 x (the sum of below)</i>	
	<b><i>Annual Base Salary</i></b>	\$ 404,000.00
+	<b><i>Annual Base Salary x Bonus Percentage*</i></b>	\$ 732,046.38
	<i>* Bonus percentage equals 181.20% [Percentage calculated under Section 6(a)(i)(B) of the Providian Agreement by dividing highest pre-merger</i>	

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**  
**Claimant/Creditor: Michele Grau-Iversen**  
**Social Security No. XXX-XX-8439**

*bonus (\$452,999.00 in 2005)  
 by highest pre-merger salary  
 (\$250,000.00 in 2005)]*

<b>Subtotal</b>	<b>\$ 1,136,046.38</b>
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	<b><u>Retirement Contribution</u></b>	<b><u>Calculation</u></b>
1x	<i>[Sec. 6(a)(i)(C) calculation is the number 1 x (the sum of below)</i>	
	<b>Annual Base Salary</b>	\$ 404,000.00
+	<b>Annual Base Salary x Bonus Percentage*</b>	\$ 732,046.38
	<i>* Bonus percentage equals 181.20.%</i>	
X	<b>Retirement Percentage*</b>	4.00 %
	<i>* Retirement percentage equals 4.00 % [Retirement percentage as reported by Washington Mutual to other terminating employees as the highest in the three years prior to the merger Effective Date]</i>	

<b>Subtotal</b>	<b>\$ 45,441.86</b>
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<b>Total Severance Subtotal</b>	<b>\$ 1,181,488.24</b>
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**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Michele Grau-Iversen**

**Social Security No. XXX-XX-8439**

**Total Claim Value Chart**

<b>Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 647,786.60</b>
<b>Claim 2. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement</b>	<b>\$ 50,758.55</b>
<b>Claim 3. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 71,416.58</b>
<b>Claim 4. Special Retention Bonus</b>	<b>\$ 221,000.00</b>
<b>Claim 5. Attorneys' Fees, Costs and Expenses</b>	<b>According to Proof</b>
<b>Claim 6. A. Alternate Claim for Accrued Guaranteed Bonus Payment Pursuant to the Providian Agreement (\$332,637.17)</b>	<b>Alternate Only – Per Above</b>
<b>B. Alternate Claim for Severance Benefits Payment Pursuant to the Providian Agreement (\$1,181,488.24)</b>	

**TOTAL CLAIM VALUE**

**\$990,961.73**

# Exhibit 12

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

UNITED STATES BANKRUPTCY COURT		District of Delaware	<b>PROOF OF CLAIM</b>
Name of Debtor: <b>Washington Mutual Inc.</b>		Case Number: <b>08-12229 (MFW)</b>	<b>COURT USE ONLY</b>
NOTE: <i>Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.</i>			
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>Michele S. Grau-Iversen</b>			
Name and address where notices should be sent: <b>c/o Stephan Kyle, Esq., Kyle Law Corporation 255 California Street, Suite 1300, San Francisco, CA 94111</b>		Telephone number: <b>(415) 839-8100</b> email: <b>skyle@kylelawcorp.com</b>	<input checked="" type="checkbox"/> Check this box if this claim amends a previously filed claim.  <b>Court Claim Number: 613</b> <i>(If known)</i>  Filed on: <b>01/26/2009</b>
Name and address where payment should be sent (if different from above):		Telephone number: email:	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
<b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>1,820,350.00</u> *Plus attorneys' fees, costs & expenses If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.			
<b>2. Basis for Claim:</b> <u>See Attachment A</u> (See instruction #2)			
<b>3. Last four digits of any number by which creditor identifies debtor:</b> 8 4 3 9		<b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a)	<b>3b. Uniform Claim Identifier (optional):</b> _____ (See instruction #3b)
<b>4. Secured Claim</b> (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.  <b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <b>Describe:</b>  <b>Value of Property:</b> \$ _____  <b>Annual Interest Rate</b> _____% <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		<b>Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:</b> \$ _____  <b>Basis for perfection:</b> _____  <b>Amount of Secured Claim:</b> \$ _____  <b>Amount Unsecured:</b> \$ _____	
<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.</b>  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B). <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).			
			<b>Amount entitled to priority:</b> \$ _____
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.			
<b>6. Credits.</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)			



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

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

If the documents are not available, please explain: **WMILT is in possession of Claimant's Personnel and Payroll Records**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

**DEFINITIONS****INFORMATION****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Michele Grau-Iversen**

**Social Security No. XXX-XX-8439**

**ATTACHMENT A – Proof of Claim**

Michele Grau-Iversen (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant remained employed by Washington Mutual up through and including the termination of Claimant’s employment following its subsidiary Bank’s placement into receivership. A table summarizing the calculations supporting Claimant’s total claim of **\$1,820,350.00, plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**Claim 1. Lump Sum Payment Under The Washington Mutual Change In Control Agreement**

On September 12, 2007, Claimant executed a Change In Control Agreement drafted by Washington Mutual, Inc. to be effective for employees of its subsidiary corporations (“**WaMu CIC Agreement**”).<sup>1</sup> The WaMu CIC Agreement was in effect on September 26, 2008. The event of placing Washington Mutual Bank into receivership and selling its assets to J.P. Morgan Chase constitutes a change in control under Section 5(f)(5) of the WaMu CIC Agreement since this event resulted in “transfer of all or substantially all of the [Holding Company]’s assets to another Person . . . whether assisted or unassisted, voluntary or involuntary.” Further, because of the receivership and sale, Claimant became an employee of J.P. Morgan Chase, thereby terminating Claimant’s employment with Washington Mutual. This termination triggered severance benefits under section 5(c) and 5(d) which provide:

**Section 5(c): Termination.** . . . . If (i) Employee’s employment is terminated by Washington Mutual or its successor without “cause” (as defined below) upon or within two years after a Change in Control (as defined below) . . . and no cause for Washington Mutual to terminate exists, then:

1. Employee shall be entitled to receive, within five business days after the effective date of such termination . . . , from Washington Mutual or its successor, a lump sum equal to two times Employee’s annual compensation. Notwithstanding the preceding, the amount paid to employee under this subsection (1) shall be offset by any payment received by Employee from the Company or any acquired company pursuant to: (i) a severance or change of control agreement, arrangement or plan, with the exception of any such payment received more than two years before all of the conditions of this Section 5(c) were satisfied, or (ii) The Workers Authorization Relocation and Notification Act (WARN Act).

\*\*\*

**Section 5(d).** For purposes of Section 5(c), Employee’s “annual compensation” shall include all items of compensation provided by Washington Mutual other

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<sup>1</sup> See **Exhibit A.**

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Michele Grau-Iversen**

**Social Security No. XXX-XX-8439**

than the value of equity rights granted to Employee. Employee’s “annual compensation” shall include the greatest of (i) the total of Employee’s salary and target bonus for the calendar year in which the termination occurs (if established before the termination), (ii) Employee’s salary and actual bonus for the prior calendar year (annualized if Employee was not employed by Washington Mutual for the entire previous calendar year), or (iii) Employee’s salary and actual bonus for the calendar year immediately preceding the year in which the Change in Control occurred (annualized if Employee was not employed by Washington Mutual for the entire such calendar year). Employee’s “annual compensation” shall also include the amount of the contributions made or anticipated to have been made on Employee’s behalf to benefit plans for the calendar year in which the termination occurs, including without limitation contributions to pension plans and plans qualified under Section 125 of the Internal Revenue Code of 1986 (cafeteria plans), provided that “annual compensation” shall not include contributions to any plans that contain provisions that provide benefits, service credit, or accelerated vesting upon a change in control.

\*\*\*

The total value of the claim owed on the basis of this contract term is determined by the following equation based on the provisions cited above:

<i><b>Obligations Under Section 5(c)(1) and (d) of the Washington CIC Agreement</b></i>	<i><b><u>Lump Sum Calculation</u></b></i>
<i><b>“Lump Sum” Severance Payment [Sec. 5(c)(1) and (d)]</b></i>	<b>\$ 1,820,350.00</b>  <i>*Annual Compensation of \$404,000.00 (salary) + \$452,999.00 (Bonus guarantee)+\$53,176.00 (Benefit Plan Contribution) x 2</i>
<b>Subtotal</b>	<b>\$ 1,820,350.00</b>

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Michele Grau-Iversen**

**Social Security No. XXX-XX-8439**

As such, Claimant is entitled to a lump sum payment equal to \$1,820,350.00, pursuant to Sections 5(c)(1) and 5(d) of the WaMu CIC Agreement. Claimant is therefore entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. 101 et seq., corresponding to the value Claimant's severance compensation under the WaMu CIC Agreement.

**Claim 2. Alternate Claim – Washington Mutual, Inc. Severance Plan**

To the extent that it is determined that a change in control did not occur or WMI is found not to be responsible for obligations under the WaMu CIC Agreement, then Claimant is entitled to severance pay in the amount of \$186,461.54 pursuant to the WaMu Severance Plan.

**Claim 3. Recovery of Attorneys' Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys' fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (*regardless of the outcome*). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys' fees and expenses in costs in connection with the Claim, the bankruptcy process, the confirmation, the Objection and the Adversary Proceeding. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant's rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement.

Similarly, Section 9 of the WaMu CIC Agreement permits the recovery of attorneys' fees, costs and expenses. Attorneys' fees, costs and expenses are also recoverable under ERISA and Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys' fees, costs and expenses, in an amount according to proof.

○○○

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Michele Grau-Iversen**

**Social Security No. XXX-XX-8439**

**Total Claim Value Chart**

<b>Claim 1. Lump Sum Payment Under the Washington Mutual CIC Agreement</b>	<b>\$1,820,350.00</b>
<b>Claim 2. Alternate Claim – WaMu Severance Plan</b>	<b>Alternate Only – Per Above</b>
<b>Claim 3. Attorneys’ Fees Costs &amp; Expenses</b>	<b>According to Proof</b>

**TOTAL CLAIM VALUE**

**\$1,820,350.00**

# Exhibit 13





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

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

If the documents are not available, please explain: **WMILT is in possession of Claimant's Personnel and Payroll Records**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

**DEFINITIONS****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**INFORMATION****Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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

**ATTACHMENT A – Proof of Claim**

Michele Grau-Iversen (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant remained employed by Washington Mutual up through and including the termination of Claimant’s employment following its subsidiary Bank’s placement into receivership. A table summarizing the calculations supporting Claimant’s total claim of **\$452,999.00 plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**Claim 1. Vested Right To Unpaid 2008 Leadership Bonus Guarantee – Pursuant to the Providian Agreement**

On July 21, 2008, Washington Mutual, Inc. provided written notice to Claimant<sup>1</sup> that she was entitled to a guaranteed annual bonus under the 2008 Leadership Bonus Plan equal to the annual bonus provision of the Providian Change in Control Employment Agreement (the “Providian Agreement”).<sup>2</sup>

The annual bonus section of the Providian Agreement provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

\*\*\*

Arriving at the amount due Claimant is simply a matter of applying her individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received the following total bonus amount:

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<sup>1</sup> See **Exhibit A.**

<sup>2</sup> See **Exhibit B.**

<u>January 2005 Bonus Amount<sup>3</sup></u>	<u>Calculation</u>
<i>Cash</i>	<i>\$225,000.00</i>
<i>Stock Options</i>	<i>\$147,026.00</i>
<i>Restricted Stock</i>	<i>\$ 80,973.00</i>
<b><i>Cash Bonus Total</i></b>	<b><i>\$452,999.00</i></b>

Claimant's guaranteed annual cash bonus under the Providian Agreement totals **\$452,999.00**, which is due and owing to her.

**Claim 2. Recovery of Attorneys' Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys' fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (***regardless of the outcome***). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys' fees and expenses in costs in connection with the Claim, the bankruptcy process, the confirmation, the Objection and the Adversary Proceeding. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant's rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Similarly, attorneys' fees, costs and expenses are also recoverable under Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys' fees, costs and expenses, in an amount according to proof.

○○○

**Total Claim Value Chart**

<b><i>Claim 1. Vested Right To Guaranteed Leadership Bonus Plan Payment Per Providian CIC Agreement</i></b>	<b><i>\$ 452,999.00</i></b>
<b><i>Claim 2. Attorneys' Fees, Costs and Expenses</i></b>	<b><i>According to Proof</i></b>

<b><i>TOTAL CLAIM VALUE</i></b>	<b><i>\$452,999.00</i></b>
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<sup>3</sup> See Exhibit C..

# Exhibit 14



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

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

If the documents are not available, please explain: **WMILT is in possession of Claimant's SERAP information and payroll information**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

**DEFINITIONS****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**INFORMATION****Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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



**ATTACHMENT A – Amended Proof of Claim**

Robert Hill (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant remained employed by Washington Mutual up through and including the termination of Claimant’s employment following its subsidiary Bank’s placement into receivership. A table summarizing the calculations supporting Claimant’s total claim of **\$3,095,217.26, plus SERAP balance, attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement**

In 2004, prior to the Providian-Washington Mutual Merger, Providian offered the Claimant and other key executives a Change of Control Employment Agreement (“**Providian Agreement**”) to provide job security and financial incentives to remain with the company in the event of corporate acquisition.<sup>1</sup> The Providian Agreement was signed on January 27, 2004, and the employment terms became effective at the time Washington Mutual acquired Providian on or about October 1, 2005.

Claimant would be entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. that is commensurate with the value of Claimant’s bonus wages that were vested and unpaid prior to September 26, 2008, under Section 4(b)(ii) of the Providian Agreement. The section provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

\*\*\*

Arriving at the amount due Claimant is simply a matter of applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received the following total bonus amount:

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<sup>1</sup> See **Exhibit A**.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert C. Hill**

**Social Security No. XXX-XX-7338**

<u>January 2005 Bonus Amount<sup>2</sup></u>	<u>Calculation</u>
Cash	\$ 220,000.00
Stock Options	\$ 112,840.20
Restricted Stock	\$ 136,500.00
<b>Cash Bonus Total</b>	<b>\$469,340.20</b>

In calculating Claimant's annual cash bonus after the merger, Washington Mutual erred by failing to include the value of the equity previously awarded to Claimant. When the value of the equity award is properly included in the calculation, Claimant's guaranteed annual cash bonus under the Providian Agreement totals \$469,340.20. The amounts due to Claimant under the paragraphs quoted above yield the figures below, which are contrasted to the amounts Washington Mutual actually paid Claimant at the time of payment of the annual bonuses. Washington Mutual's calculation error resulted in the following underpayment of bonus wages **\$643,020.60** as detailed below.

<u>Obligations Under Section 4(b)(ii) of the Providian Agreement</u>	<u>Amount Paid By WaMu</u>	<u>Actual Entitlement Per Section 4(b)(ii)</u>	<u>Unpaid Bonus Wage Balance</u>
<i>Annual Bonus for 2005 (as paid in Jan. 2006)</i>	\$220,000.00	\$469,340.20	\$249,340.20
<i>Annual Bonus for 2006 (as paid in Jan. 2007)</i>	\$220,000.00	\$469,340.20	\$249,340.20
<i>Annual Bonus for 2007 (as paid in Jan. 2008)</i>	\$325,000.00	\$469,340.20	\$144,340.20
<b>SUBTOTAL</b>			<b>\$643,020.60</b>

**Claim 2. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement**

As set forth above, Washington Mutual underpaid Claimant's bonus wages for the 2005 – 2007 performance years. Under Section 8 of the Providian Agreement, Claimant was entitled to

<sup>2</sup> Claimant has requested his 2005 Compensation Statement from WMILT, but it has not been provided to date.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert C. Hill**

**Social Security No. XXX-XX-7338**

interest at the applicable federal rate (“AFR”) for the unpaid wage balance. This section provides:

**Section 8: Full Settlement.** ... The Corporation agrees to pay, to the full extent permitted by law, ... in each case interest, on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended ...

Therefore, Claimant had a vested right to interest on the unpaid bonus wages prior to September 26, 2008, as outlined below:

<b><i>Unpaid Portion of 2005 Bonus Payable January 2006</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2006 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2005 Bonus Payment</i></b> <i>[calculated from Jan. 2006 through Sept. 26, 2008 only]</i>
<b>\$249,340.20</b>	<b>2.667 Years</b>	<b>4.68%</b>	<b>\$32,736.90</b>
<b><i>Unpaid Portion of 2006 Bonus Payable January 2007</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2007 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2006 Bonus Payment</i></b> <i>[calculated from Jan. 2007 through Sept. 26, 2008 only]</i>
<b>\$249,340.20</b>	<b>1.667 Years</b>	<b>4.68%</b>	<b>\$19,985.01</b>
<b><i>Unpaid Portion of 2007 Bonus Payable January 2008</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2008 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2007 Bonus Payment</i></b> <i>[calculated from Jan. 2008 through Sept. 26, 2008 only]</i>
<b>\$144,340.20</b>	<b>.667 Years</b>	<b>4.41%</b>	<b>\$4,259.12</b>
<b>SUBTOTAL</b>			<b>\$ 56,981.04</b>

**Claim 3. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement**

Because Washington Mutual failed to pay, in full, the bonus wages that claimant was entitled to under the Providian Agreement (as detailed above), Claimant had a vested right, prior to September 26, 2008, to a wage penalty equal to 30 days wages pursuant to Labor Code Sections 1201 and 1203. This wage penalty is equal to **\$66,195.02** [(Annual salary of \$325,000.00 + Annual bonus of \$469,340.20 divided by 360 days) x 30 days].

**Claim 4. Special Retention Bonus**

On February 13, 2008, Washington Mutual, Inc. provided written notice to Claimant that he was entitled to a special retention bonus which was to vest and become fully payable on January 31, 2010.<sup>3</sup> On August 7, 2008, Washington Mutual, Inc. provided Claimant with a replacement Special Bonus Opportunity (the “Replacement Special Retention Bonus”) that indicated that it was intended to supersede “the bonus described in the agreement dated February 13, 2008 (“Prior Bonus Agreement”) *as well as the Providian Change in Control Agreement that you signed (“Providian Agreement”)*. According to the Replacement Special Retention Bonus, Claimant was entitled to a special retention bonus in the total amount of \$655,000.00. Of this total amount, \$484,000 became fully vested and was paid on or about September 1, 2008. The remaining **\$171,000** was to vest and become fully payable on July 1, 2009.<sup>4</sup> As stated herein, the event of bankruptcy constituted a change in control event under the WaMu CIC Agreement and triggered an acceleration of the payment of the retention bonus under the terms of the Replacement Special Retention Bonus.

**Claim 5. Alternate Claim - Severance Benefits Payment Pursuant to the Providian Agreement**

To the extent that it is determined that WMI is found not to be the party responsible for the obligations under the Replacement Special Retention Opportunity, then Claimant is entitled to additional compensation pursuant to the Providian Agreement as follows:

The Providian Agreement had a three-year term commencing on October 1, 2005 (when Washington Mutual acquired Providian) and was still in the effect on September 25, 2008. The Providian Agreement contains a severance provision which was triggered as a result of termination of Claimant’s employment. Claimant was employed by Washington Mutual at the time Washington Mutual Bank was placed into receivership and its assets transferred to J.P. Morgan Chase. As a result, Claimant became an employee of J.P. Morgan Chase and his

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<sup>3</sup> Claimant has requested a copy of the February 13, 2008 Special Bonus Opportunity award from WMILT, but it has not been produced to date.

<sup>4</sup> See **Exhibit B**.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert C. Hill**

**Social Security No. XXX-XX-7338**

employment with Washington Mutual was effectively terminated, triggering the vesting of the severance payment rights to Claimant.

If WMI is deemed not to be a contracting party to the Replacement Special Retention Bonus, the rights and benefits under the Providian Agreement would remain intact, since WMI is the stated successor to the Providian Agreement. These rights and benefits include severance benefits under Section 6(a) of Providian Agreement, which provides in pertinent part:

**Section 6(a): Obligations of the Corporation upon Termination:** If during the Employment Period, the Corporation ... shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Corporation shall pay to the Executive a lump sum in cash within 30 days of the Date of Termination the aggregate of the following amounts:

\*\*\*

B. the amount equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage [defined in this paragraph]. ..., and

C. a separate lump-sum payment equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage and (3) the Retirement Contribution Percentage [defined], and

\*\*\*

The amount due Claimant is calculated by applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Briefly summarized, the amounts due to Claimant under the paragraphs quoted above yields the following figures:

	<b><i>Severance Due = One Year Bonus + One Year Salary</i></b>	<b><u>Calculation</u></b>
<i>Ix</i>	<i>[Sec. 6(a)(i)(B) calculation is the number 1 x (the sum of below)</i>	
<hr/>		
	<b><i>Annual Base Salary</i></b>	<b>\$ 325,000.00</b>

+ **Annual Base Salary  
x Bonus Percentage\*** \$ 610,142.26

\* Bonus percentage equals  
187.74%

[Percentage calculated  
under Section 6(a)(i)(B) of  
the Providian Agreement by  
dividing highest pre-merger  
bonus (\$469,340.20 in 2005)  
by highest pre-merger salary  
(\$250,000.00 in 2005)]

**Subtotal** \$ **\$935,142.26**

**Retirement  
Contribution** **Calculation**  
[Sec. 6(a)(i)(C) calculation  
is the number 1 x (the sum of  
below)]

1x **Annual Base Salary** \$ 325,000.00

+ **Annual Base Salary  
x Bonus Percentage\*** \$ 610,142.26

\* Bonus percentage equals  
187.74.%

X **Retirement  
Percentage\*** 4.00 %

\* Retirement percentage  
equals 4.00 %  
[Retirement percentage as  
reported by Washington  
Mutual to other terminating  
employees as the highest in  
the three years prior to the  
merger Effective Date]

**Subtotal** \$ **37,405.69**

**Total Severance  
Subtotal** \$ **972,547.95**

**Claim 6. Vested Right To Unpaid 2008 Leadership Bonus Guarantee – Pursuant to the Providian Agreement**

On July 21, 2008, Washington Mutual, Inc. provided written notice to Claimant<sup>5</sup> that he was entitled to a guaranteed annual bonus under the 2008 Leadership Bonus Plan equal to the annual bonus provision of the Providian Change in Control Employment Agreement (the “Providian Agreement”). Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received \$469,340.20 (see chart under Claim 1, above. Therefore, Claimant’s guaranteed annual cash bonus under the Providian Agreement totals **\$469,340.20**, which is due and owing to him.

**Claim 7. Lump Sum Payment Under The Washington Mutual Change In Control Agreement**

On December 17, 2007, Claimant executed a Change In Control Agreement drafted by Washington Mutual, Inc. to be effective for employees of its subsidiary corporations (“**WaMu CIC Agreement**”).<sup>6</sup> The WaMu CIC Agreement was in effect on September 25, 2008. The event of placing Washington Mutual Bank into receivership and selling its assets to J.P. Morgan Chase constitutes a change in control under Section 5(f)(5) of the WaMu CIC Agreement since this event resulted in “transfer of all or substantially all of the [Holding Company]’s assets to another Person . . . whether assisted or unassisted, voluntary or involuntary.” Further, because of the receivership and sale, Claimant became an employee of J.P. Morgan Chase, thereby terminating Claimant’s employment with Washington Mutual. This termination triggered severance benefits under section 5(c) and 5(d) which provide:

**Section 5(c): Termination.** . . . . If (i) Employee’s employment is terminated by Washington Mutual or its successor without “cause” (as defined below) upon or within two years after a Change in Control (as defined below) . . . and no cause for Washington Mutual to terminate exists, then:

1. Employee shall be entitled to receive, within five business days after the effective date of such termination . . . , from Washington Mutual or its successor, a lump sum equal to two times Employee’s annual compensation. Notwithstanding the preceding, the amount paid to employee under this subsection (1) shall be offset by any payment received by Employee from the Company or any acquired company pursuant to: (i) a severance or change of control agreement, arrangement or plan, with the exception of any such payment received more than two years before all of the conditions of this Section 5(c) were

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<sup>5</sup> See Exhibit C.

<sup>6</sup> See Exhibit D.

satisfied, or (ii) The Workers Authorization Relocation and Notification Act (WARN Act).

\*\*\*

**Section 5(d).** For purposes of Section 5(c), Employee’s “annual compensation” shall include all items of compensation provided by Washington Mutual other than the value of equity rights granted to Employee. Employee’s “annual compensation” shall include the greatest of (i) the total of Employee’s salary and target bonus for the calendar year in which the termination occurs (if established before the termination), (ii) Employee’s salary and actual bonus for the prior calendar year (annualized if Employee was not employed by Washington Mutual for the entire previous calendar year), or (iii) Employee’s salary and actual bonus for the calendar year immediately preceding the year in which the Change in Control occurred (annualized if Employee was not employed by Washington Mutual for the entire such calendar year). Employee’s “annual compensation” shall also include the amount of the contributions made or anticipated to have been made on Employee’s behalf to benefit plans for the calendar year in which the termination occurs, including without limitation contributions to pension plans and plans qualified under Section 125 of the Internal Revenue Code of 1986 (cafeteria plans), provided that “annual compensation” shall not include contributions to any plans that contain provisions that provide benefits, service credit, or accelerated vesting upon a change in control.

\*\*\*

The total value of the claim owed on the basis of this contract term is determined by the following equation based on the provisions cited above:

<b><i>Obligations Under Section 5(c)(1) and (d) of the Washington CIC Agreement</i></b>	<b><i><u>Lump Sum Calculation</u></i></b>
	<b>\$ 1,688,680.40</b>
<b><i>“Lump Sum” Severance Payment [Sec. 5(c)(1) and (d)]</i></b>	<i>*Annual Compensation of \$325,000.00 (salary) + \$469,340.20 (Bonus guarantee)+\$50,000.00 (Benefits)<sup>7</sup> x 2</i>

<sup>7</sup> The figure for Benefits is estimated based upon information presently available to Claimant. He has requested his payroll records from WMILT and reserves the right to seek the actual benefit compensation under the WMI CIC Agreement according to proof at the Hearing.



**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert C. Hill**

**Social Security No. XXX-XX-7338**

<b><i>Subtotal</i></b>	<b>\$ 1,688,680.40</b>
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As such, Claimant is entitled to a lump sum payment equal to \$1,688,680.40, pursuant to Sections 5(c)(1) and 5(d) of the WaMu CIC Agreement. Claimant is therefore entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. 101 et seq., corresponding to the value Claimant's severance compensation under the WaMu CIC Agreement.

**Claim 8. Alternate Claim – Washington Mutual, Inc. Severance Plan**

To the extent that it is determined that a change in control did not occur or WMI is found not to be responsible for obligations under the WaMu CIC Agreement, then Claimant is entitled to severance pay in the amount of \$150,000.00 pursuant to the WaMu Severance Plan.

**Claim 9. Vested Right To Account Balance Under WMI Supplemental Executive Retirement Accumulation Plan (SERAP)**

Claimant was a participant in the Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan (SERAP) with a vested account balance as of September 26, 2008. Claimant is informed and believes that WMILT paid no portion of this vested of balance at the time of his termination.<sup>8</sup>

Upon the merger of Providian into Washington Mutual, the SERAP was amended by the Amendment No. 1 adopted September 30, 2005 (the "Amendment No. 1") to provide for plan entry dates and prior service credits.<sup>9</sup> Pursuant to Amendment No. 1, the definition of "Executive Service" was amended by adding the following language to the end of Section 2.20:

Employees who on September 30, 2005 were employed by Providian Financial Corporation, Providian National Bank or any affiliate or subsidiary thereof and who on October 1, 2005 became employed by the Employer shall, after April 1, 2006, be credited with Service for service with Providian Financial Corporation, Providian Nation Bank or their affiliates or subsidiaries, but only to the extent that such service occurred after December 31, 2003.

Pursuant to Amendment No. 1, Claimant was entitled to up to two (2) additional years of service (for their service with Providian) dating back to Jan. 1, 2004.

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<sup>8</sup> The precise amounts of Claimant's SERAP balance and payment made are not available to Claimant at this time. Claimant has requested the SERAP balance and payment information and documentation from WMILT, but none has been provided by WMILT to date.

<sup>9</sup> See **Exhibit E**.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Robert C. Hill**

**Social Security No. XXX-XX-7338**

In addition, pursuant to Section 6(a)(i)(D) of the Providian Agreement, Claimant was entitled to a payment equal to the unvested portion of the qualified and non-qualified retirement contribution account, in addition to any vested amounts due under such plans. This would include the unvested balances under the SERAP. Accordingly, Claimant is entitled to the entirety of his balance in the SERAP as of September 26, 2008.

**Claim 10. Recovery of Attorneys' Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys' fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (*regardless of the outcome*). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys' fees and expenses in costs in connection with the Claim, the bankruptcy process, the confirmation this Objection and the Adversary Proceeding. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant's rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Similarly, Section 9 of the WaMu CIC Agreement permits the recovery of attorneys' fees, costs and expenses. Attorneys' fees, costs and expenses are also recoverable under ERISA and Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys' fees, costs and expenses, in an amount according to proof.

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Debtor: Washington Mutual, Inc. 08-12229 (MFW)

Claimant/Creditor: Robert C. Hill

Social Security No. XXX-XX-7338

Total Claim Value Chart

<i>Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement</i>	<i>\$ 643,020.60</i>
<i>Claim 2. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement</i>	<i>\$ 56,981.04</i>
<i>Claim 3. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement</i>	<i>\$ 66,195.02</i>
<i>Claim 4. Special Retention Bonus</i>	<i>\$ 171,000.00</i>
<i>Claim 5. Alternate Claim - Severance Benefits Payment Pursuant to the Providian Agreement (\$972,547.95)</i>	<i>Alternate Only – Per Above</i>
<i>Claim 6. Vested Right To Guaranteed Leadership Bonus Plan Payment Per Providian CIC Agreement</i>	<i>\$ 469,340.20</i>
<i>Claim 7. Lump Sum Payment Under the Washington Mutual Change In Control Agreement</i>	<i>\$1,688,680.40</i>
<i>Claim 8. Alternate Claim – WaMu Severance Plan (\$150,000.00)</i>	<i>Alternate Only – per above</i>
<i>Claim 9. Vested Rights To Supplemental Executive Retirement Accumulation Plan (SERAP) Account Balance</i>	<i>According to Proof</i>
<i>Claim 10. Attorneys' Fees, Costs and Expenses</i>	<i>According to Proof</i>

**TOTAL CLAIM VALUE**

**\$3,095,217.26**

**\*PLUS SERAP BALANCE, ATTORNEYS' FEES, COSTS & EXPENSES**

# Exhibit 15



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

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

If the documents are not available, please explain:

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

**DEFINITIONS****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**INFORMATION****Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Michael Rapaport**

**Social Security No.: XXX-XX-0235**

**ATTACHMENT A – Amended Proof of Claim**

Michael Rapaport (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant was continuously employed by Washington Mutual up through and including his termination date of June 2, 2008. A table summarizing the calculations supporting Claimant’s total claim of **\$1,937,692.56, plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

Washington Mutual, although grossly miscalculated, originally agreed to pay \$743,594.48 in severance benefits to Claimant pursuant to the Providian Agreement at the time of termination of his employment. Claimant originally filed a proof of claim in the amount of \$283,594.48 (\$743,594.48 minus \$460,000 first payment) in reliance on the compensation calculations prepared by Washington Mutual at the time of his departure. Subsequent to filing the original claim, Claimant became aware that Washington Mutual miscalculated (and failed to pay) multiple components of compensation due and owing to him, including (1) underpayment of guaranteed bonuses for three years, (2) underpayment of the severance obligation under the Providian Agreement, and (3) underpayment of SERAP benefits owed to him. These underpayments result in the accrual of interest under the Providian Agreement, the imposition of Labor Code penalties, and the obligation to reimburse Claimant for his attorneys’ fees, costs and expenses, all as set forth below.

**CLAIMS BASED ON RIGHTS VESTING PRIOR TO SEPTEMBER 26, 2008**

**Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement**

In 2004, prior to the Providian-Washington Mutual Merger, Providian offered the Claimant and other key executives a Change of Control Employment Agreement (“**Providian Agreement**”) to provide job security and financial incentives to remain with the company in the event of corporate acquisition.<sup>1</sup> The Providian Agreement was signed on January 27, 2004, and the employment terms became effective at the time Washington Mutual acquired Providian on or about October 1, 2005. The Providian Agreement became an obligation of Washington Mutual, Inc. as successor in interest to Providian.<sup>2</sup>

Claimant is entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. that is commensurate with the value of Claimant’s bonus wages that were vested and unpaid prior to September 26, 2008, under Section 4(b)(ii) of the Providian Agreement. The section provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been

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<sup>1</sup> See **Exhibit A.**

<sup>2</sup> See **Exhibit B.**



**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Michael Rapaport**

**Social Security No.: XXX-XX-0235**

employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

\*\*\*

Arriving at the amount due Claimant is simply a matter of applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant's highest bonus prior to the effective date was paid in January 2005 when Claimant received the following total bonus amount:

<b><u>January 2005 Bonus Amount<sup>3</sup></u></b>	<b><u>Calculation</u></b>
<b>Cash</b>	<b>\$ 230,000.00</b>
<b>Stock Options</b>	<b>\$ 214,676.00</b>
<b>Restricted Stock</b>	<b>\$ 118,980.00</b>
<b>Cash Bonus Total</b>	<b>\$563,656.00</b>

In calculating Claimant's annual cash bonus after the merger, Washington Mutual erred by failing to include the value of the equity previously awarded to Claimant. When the value of the equity award is properly included in the calculation, Claimant's guaranteed annual cash bonus under the Providian Agreement totals \$563,656.00. The amounts owed to Claimant under the paragraphs quoted above yield the figures below, which are contrasted to the amounts Washington Mutual actually paid Claimant at the time of payment of the annual bonuses. Washington Mutual's calculation error resulted in the following underpayment of bonus wages totaling **\$895,948.00** as detailed below.

<b><u>Obligations Under Section 4(b)(ii) of the Providian Agreement</u></b>	<b><u>Amount Paid By WAMU</u></b>	<b><u>Actual Entitlement Per Section 4(b)(ii)</u></b>	<b><u>Unpaid Bonus Wage Balance</u></b>
<b>Annual Bonus for 2005 (as paid in Jan. 2006)</b>	<b>\$ 250,000.00</b>	<b>\$ 563,656.00</b>	<b>\$ 313,656.00</b>
<b>Annual Bonus for 2006 (as paid in Jan. 2007)</b>	<b>\$315,000.00</b>	<b>\$ 563,656.00</b>	<b>\$248,636.00</b>
<b>Annual Bonus for 2007 (as paid in Jan. 2008)</b>	<b>\$ 230,000.00</b>	<b>\$ 563,656.00</b>	<b>\$ 333,656.00</b>
<b>Subtotal</b>			<b>\$895,948.00</b>

<sup>3</sup> See Exhibit C.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Michael Rapaport**

**Social Security No.: XXX-XX-0235**

**Claim 2. Termination Benefits Payment Pursuant to the Providian Agreement**

The Providian Agreement had a three-year term commencing on October 1, 2005 (when Washington Mutual acquired Providian) and was in effect on June 2, 2008, when claimant was terminated. The Providian Agreement contains a severance provision which was triggered as of June 2, 2008. Claimant terminated his employment with Washington Mutual for Good Reason triggering the vesting of the severance payment rights to Claimant. However, Washington Mutual miscalculated the amount owed to Claimant and underpaid him as set forth below.

Claimant is entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. § 101 commensurate with the value of Claimant's severance benefits under Section 6(a) of the Providian Agreement, which provides in pertinent part:

**Section 6(a): Obligations of the Corporation upon Termination:** If during the Employment Period, the Corporation ... shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Corporation shall pay to the Executive a lump sum in cash within 30 days of the Date of Termination the aggregate of the following amounts:

A. the sum of (1) the Executive's Base Salary through the Date of Termination, (2) the product of (x) the Annual Bonus and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365, and (3) any compensation previously deferred by the Executive under non-qualified plans ... and the value of any unused paid time off ... (the "Accrued Obligations"), and

B. the amount equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage [defined in this paragraph]. ..., and

C. a separate lump-sum payment equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage and (3) the Retirement Contribution Percentage [defined]. . .

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**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Michael Rapaport**

**Social Security No.: XXX-XX-0235**

The amount due Claimant is calculated by applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Briefly summarized, the amounts due to Claimant under the paragraphs quoted above yields the following figures:

<b><u>Obligations Under Section 6(a)(i)(A) of the Providian Agreement</u></b>	<b><u>Amount Calculated By WAMU</u></b>	<b><u>Actual Entitlement Per Section 6(a)(i)(A)</u></b>	<b><u>Unpaid Prorated Bonus Wage Balance</u></b>
<b>Prorated Annual Bonus for 2008 (annual bonus (\$563,656.00) x percent of year employed (154/365 or 42.20% ))</b>	<b>\$ 97,041.00</b>	<b>\$ 237,862.83</b>	<b>\$ 140,821.83</b>
<b>Subtotal</b>			<b>\$140,821.83</b>
<b>Severance Due = One Year Bonus + One Year Salary</b>	<b>Amount Calculated By WAMU<sup>4</sup></b>	<b>Actual Entitlement Per Section 6(a)(i)</b>	<b>Unpaid Severance Balance</b>
1x [Sec. 6(a)(i)(B) calculation is the number 1 x (the sum of below)]			
<b>Annual Base Salary</b>	<b>\$ 320,000.00</b>	<b>\$ 320,000.00</b>	<b>\$0</b>
+			
<b>Annual Base Salary x Bonus Percentage*</b>	<b>\$ 294,400.00</b>	<b>\$ 721,479.68</b>	<b>\$427,079.68</b>
* Bonus percentage equals 225.46 % [Percentage calculated under Section 6(a)(i)(B) of the Providian Agreement by dividing highest pre-merger bonus (\$ 563,656.00 in 2005) by highest pre-merger salary (\$ 250,000.00 in 2005)]			
<b>Subtotal</b>			<b>\$427,079.68</b>

<sup>4</sup> See Exhibit D.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Michael Rapaport**

**Social Security No.: XXX-XX-0235**

	<b><u>Retirement Contribution</u></b> <i>[Sec. 6(a)(i)(C) calculation is the number 1 x (the sum of below)]</i>	<b><u>Amount Calculated By WAMU</u></b>	<b><u>Actual Entitlement Per Section 6(a)(i)</u></b>	<b><u>Unpaid Retirement Contribution Balance</u></b>
1x	<b>Annual Base Salary</b>	<b>\$320,000.00</b>	<b>\$320,000.00</b>	<b>\$0</b>
+	<b>Annual Base Salary x Bonus Percentage**</b> <i>Bonus percentage equals 225.46%</i>	<b>\$294,400.00</b>	<b>\$721,479.68</b>	<b>\$ 427,079.68</b>
X	<b>Retirement Percentage**</b> <i>Retirement percentage equals 4.00 %</i> <i>[**Retirement percentage as reported by Washington Mutual t as the highest in the three years prior to the merger Effective Date]</i>	<b>4.00%</b>	<b>4.00%</b>	
<b>Subtotal</b>		<b>\$24,576.00</b>	<b>\$41,659.19</b>	<b>\$ 17,083.19</b>
<b>Total Termination Benefits Owed</b>				
	<b>Total Termination Benefits Subtotal</b>	<b>\$460,000.00<sup>5</sup></b>	<b>\$1,321,001.70</b>	<b>\$ 861,001.70</b>

<sup>5</sup> Washington Mutual only paid a portion of the benefits owed to Claimant equal to the maximum amount permitted at the time of separation pursuant to Section 409A of the Internal Revenue Code. The initial payment was only \$460,000. See Exhibit E.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Michael Rapaport**

**Social Security No.: XXX-XX-0235**

**Claim 3. Vested Rights To Accrued Interest Up To September 25, 2008, On Unpaid Bonus Wages And Unpaid Termination Benefits Under The Providian Agreement**

As set forth above, Washington Mutual underpaid Claimant's bonus wages for the 2005 - 2007 performance years and underpaid his termination benefit entitlement at the time of the termination. Under Section 8 of the Providian Agreement, Claimant was entitled to interest at the applicable federal rate ("AFR") on these unpaid balances. This section provides:

**Section 8: Full Settlement.** ... The Corporation agrees to pay, to the full extent permitted by law, ... in each case interest, on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended ...

Therefore, Claimant had a vested right to interest on the unpaid bonus wages prior to September 25, 2008, as outlined below:

<b><i>Unpaid Portion of 2005 Bonus Payable January 2006</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2006 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed Bonus Payment</i></b>  <i>[calculated from Jan. 2006 through Sept. 26, 2008 only]</i>
<b>\$ 313,656.00</b>	<b>2.667 Years</b>	<b>4.68%</b>	<b>\$ 41,181.19</b>
<b><i>Unpaid Portion of 2006 Bonus Payable January 2007</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2007 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed Bonus Payment</i></b>  <i>[calculated from Jan. 2007 through Sept. 26, 2008 only]</i>
<b>\$ 248,636.00</b>	<b>1.667 Years</b>	<b>4.68%</b>	<b>\$ 19,928.57</b>
<b><i>Unpaid Portion of 2007 Bonus Payable January 2008</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2008 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed Bonus Payment</i></b>  <i>[calculated from Jan. 2008 through Sept. 26, 2008 only]</i>

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Michael Rapaport**

**Social Security No.: XXX-XX-0235**

<b>\$ 333,656.00</b>	<b>.667 Years</b>	<b>4.41%</b>	<b>\$ 9,845.36</b>
<b><i>Unpaid Portion of Termination Benefits Payable June, 2008</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2008 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi-Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed Termination Benefits Payment</i></b>  <i>[calculated from June 2008 through Sept. 26, 2008 only]</i>
<b>\$ 861,001.70</b>	<b>.250 Years</b>	<b>4.417%</b>	<b>\$ 8,107.27</b>
<b><i>Subtotal</i></b>			<b>\$ 79,062.39</b>

**Claim 4. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement**

Because Washington Mutual failed to pay, in full, the bonus wages and termination benefits that claimant was entitled to under the Providian Agreement (as detailed above), Claimant had a vested right, prior to September 26, 2008, to a wage penalty equal to 30 days wages pursuant to Labor Code Sections 1201 and 1203. This wage penalty is equal to **\$73,638.00** [(Annual salary of \$320,000.00 + Annual bonus of \$563,656.00 divided by 360 days) x 30 days].

**Claim 5. Vested Right To Account Balance Under WMI Supplemental Executive Retirement Accumulation Plan (SERAP)**

Claimant was a participant in the Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan (SERAP) with an account balance of \$37,389.96 as of June 2, 2008<sup>6</sup>. WMILT paid a portion of this vested of balance on February 1, 2013. This payment was in the amount of \$9,347.49 only.

Upon the merger of Providian into Washington Mutual, the SERAP was amended by the Amendment No. 1 adopted September 30, 2005 (the “Amendment No. 1”) to provide for plan entry dates and prior service credits.<sup>7</sup> Pursuant to Amendment No. 1, the definition of “Executive Service” was amended by adding the following language to the end of Section 2.20:

<sup>6</sup> See Exhibit F.

<sup>7</sup> See Exhibit G.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Michael Rapaport**

**Social Security No.: XXX-XX-0235**

Employees who on September 30, 2005 were employed by Providian Financial Corporation, Providian National Bank or any affiliate or subsidiary thereof and who on October 1, 2005 became employed by the Employer shall, after April 1, 2006, be credited with Service for service with Providian Financial Corporation, Providian Nation Bank or their affiliates or subsidiaries, but only to the extent that such service occurred after December 31, 2003.

Pursuant to Amendment No. 1, Claimant was entitled to up to two (2) additional years of service (for their service with Providian) dating back to Jan. 1, 2004. Yet, the calculations made by WMI, as represented to Claimant in the Notice on March 11, 2009 signed by Robert Williams on behalf of WMI (the "Notice") as being reflected on the books and records of the Debtor, failed to take into account these additional years of Executive Service for the Claimants.

Regardless, pursuant to Section 6(a)(i)(D) of the Providian Agreement, Claimant was entitled to a payment equal to the unvested portion of the qualified and non-qualified retirement contribution account, in addition to any vested amounts due under such plans. This would include the unvested balances under the SERAP. Accordingly, Claimant is entitled to the remainder of his balance in his SERAP in the amount of **\$28,042.47** (\$37,389.96 balance minus payment of \$9,347.49)

**Claim 6. Attorneys' Fees and Expenses Pursuant to the Providian Agreement**

The Providian Agreement provides for the payment of attorneys' fees to the employee in the event either party contests the Agreement. Specifically, Section 8 of the Providian Agreement states, in part:

The Corporation agrees to pay, to the fullest extent permitted by law, all legal fees and expenses which the Executive may reasonably incur in good faith as a result of any contest (***regardless of the outcome thereof***) by the Corporation, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Executive about the amount of any payment pursuant to this Agreement...<sup>8</sup>

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<sup>8</sup> Providian Agreement at Section 8 (emphasis added).

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Michael Rapaport**

**Social Security No.: XXX-XX-0235**

This Section 8 requires the payment of attorneys' fees to the Employee related to any good faith contest of sums owed under the Providian Agreement, regardless of the outcome. (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys' fees and expenses in costs in connection with the Claim, and WMILT's Objection to the Claim. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant's rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Attorneys' fees, costs and expenses are also recoverable under ERISA and Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys' fees, costs and expenses, in an amount according to proof.

**Total Claim Value Chart**

<b>Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 895,948.00</b>
<b>Claim 2. Unpaid Severance Benefits Payment Pursuant to the Providian Agreement</b>	<b>\$ 861,001.70</b>
<b>Claim 3. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement</b>	<b>\$ 79,062.39</b>
<b>Claim 4. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 73,638.00</b>
<b>Claim 5. Claim for Unpaid SERAP Balance</b>	<b>\$ 28,042.47</b>
<b>Claim 6. Attorneys' Fees Costs and Expenses</b>	<b>\$ According to Proof</b>

**TOTAL CLAIM VALUE**

**\$1,937,692.56  
Plus Attorneys' Fees,  
Costs & Expenses**



# Exhibit 16



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

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

If the documents are not available, please explain: **WMILT is in possession of Claimant's personnel file and payroll information**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

**DEFINITIONS****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**INFORMATION****Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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

**ATTACHMENT A – Amended Proof of Claim**

David Tomlinson (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant remained employed by Washington Mutual up through and including the termination of Claimant’s employment following its subsidiary Bank’s placement into receivership. A table summarizing the calculations supporting Claimant’s total claim of **\$3,191,342.68, plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement**

In 2004, prior to the Providian-Washington Mutual Merger, Providian offered the Claimant and other key executives a Change of Control Employment Agreement (“**Providian Agreement**”) to provide job security and financial incentives to remain with the company in the event of corporate acquisition.<sup>1</sup> The Providian Agreement was signed on January 27, 2004, and the employment terms became effective at the time Washington Mutual acquired Providian on or about October 1, 2005.

Claimant would be entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. that is commensurate with the value of Claimant’s bonus wages that were vested and unpaid prior to September 26, 2008, under Section 4(b)(ii) of the Providian Agreement. The section provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

\*\*\*

Arriving at the amount due Claimant is simply a matter of applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received the following total bonus amount:

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<sup>1</sup> See **Exhibit A**.

<u>January 2005 Bonus Amount<sup>2</sup></u>	<u>Calculation</u>
<i>Cash</i>	\$ 275,000.00
<i>Stock Options</i>	\$ 147,026.00
<i>Restricted Stock</i>	\$ 80,973.00
<b>Cash Bonus Total</b>	<b>\$502,999.00</b>

In calculating Claimant's annual cash bonus after the merger, Washington Mutual erred by failing to include the value of the equity previously awarded to Claimant. When the value of the equity award is properly included in the calculation, Claimant's guaranteed annual cash bonus under the Providian Agreement totals \$502,999.00. The amounts due to Claimant under the paragraphs quoted above yield the figures below, which are contrasted to the amounts Washington Mutual actually paid Claimant at the time of payment of the annual bonuses. Washington Mutual's calculation error resulted in the following underpayment of bonus wages in the amount of **\$341,003.00** as detailed below.

<u>Obligations Under Section 4(b)(ii) of the Providian Agreement</u>	<u>Amount Paid By WaMu</u>	<u>Actual Entitlement Per Section 4(b)(ii)</u>	<u>Unpaid Bonus Wage Balance</u>
<i>Annual Bonus for 2005 (as paid in Jan. 2006)</i>	\$300,000.00	\$502,999.00	\$202,999.00
<i>Annual Bonus for 2006 (as paid in Jan. 2007)</i>	\$433,997.00	\$502,999.00	\$69,002.00
<i>Annual Bonus for 2007 (as paid in Jan. 2008)</i>	\$433,997.00	\$502,999.00	\$69,002.00
<b>SUBTOTAL</b>			<b>\$341,003.00</b>

<sup>2</sup> Claimant has requested his 2005 Compensation Statement from WMILT, but it has not been provided to date. Claimant reserves the right to seek additional amounts according to proof at the Hearing.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: David A. Tomlinson**

**Social Security No. XXX-XX-6135**

**Claim 2. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement**

As set forth above, Washington Mutual underpaid Claimant's bonus wages for the 2005 – 2007 performance years. Under Section 8 of the Providian Agreement, Claimant was entitled to interest at the applicable federal rate ("AFR") for the unpaid wage balance. This section provides:

**Section 8: Full Settlement.** ... The Corporation agrees to pay, to the full extent permitted by law, ... in each case interest, on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended ...

Therefore, Claimant had a vested right to interest on the unpaid bonus wages prior to September 26, 2008, as outlined below:

<b><i>Unpaid Portion of 2005 Bonus Payable January 2006 [Sec. 8]</i></b>	<b><i>No. of Years Delayed [Jan. 2006 – Sept. 2008]</i></b>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2005 Bonus Payment [calculated from Jan. 2006 through Sept. 26, 2008 only]</i></b>
<b>\$202,999.00</b>	<b>2.667 Years</b>	<b>4.68%</b>	<b>\$26,652.58</b>
<b><i>Unpaid Portion of 2006 Bonus Payable January 2007 [Sec. 8]</i></b>	<b><i>No. of Years Delayed [Jan. 2007 – Sept. 2008]</i></b>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2006 Bonus Payment [calculated from Jan. 2007 through Sept. 26, 2008 only]</i></b>
<b>\$69,002.00</b>	<b>1.667 Years</b>	<b>4.68%</b>	<b>\$5,530.62</b>
<b><i>Unpaid Portion of 2007 Bonus Payable January 2008 [Sec. 8]</i></b>	<b><i>No. of Years Delayed [Jan. 2008 – Sept. 2008]</i></b>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2007 Bonus Payment [calculated from Jan. 2008 through Sept. 26, 2008 only]</i></b>
<b>\$69,002.00</b>	<b>.667 Years</b>	<b>4.41%</b>	<b>\$2,036.08</b>
<b>SUBTOTAL</b>			<b>\$ 34,219.28</b>

**Claim 3. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement**

Because Washington Mutual failed to pay, in full, the bonus wages that claimant was entitled to under the Providian Agreement (as detailed above), Claimant had a vested right, prior to September 26, 2008, to a wage penalty equal to 30 days wages pursuant to Labor Code Sections 1201 and 1203. This wage penalty is equal to **\$75,666.58** [(Annual salary of \$405,000.00 + Annual bonus of \$502,999.00 divided by 360 days) x 30 days].

**Claim 4. Special Retention Bonus**

On February 13, 2008, Washington Mutual, Inc. provided written notice to Claimant that he was entitled to a special retention bonus which was to vest and become fully payable on January 31, 2010.<sup>3</sup> On August 7, 2008, Washington Mutual, Inc. provided Claimant with a replacement Special Bonus Opportunity (the “Replacement Special Retention Bonus”) that indicated that it was intended to supersede “the bonus described in the agreement dated February 13, 2008 (“Prior Bonus Agreement”) *as well as the Providian Change in Control Agreement that you signed (“Providian Agreement”)*. According to the Replacement Special Retention Bonus, Claimant was entitled to a special retention bonus in the total amount of \$809,000.00. Of this total amount, \$598,000 became fully vested and was paid on or about September 1, 2008. The remaining **\$211,000** was to vest and become fully payable on July 1, 2009.<sup>4</sup> As stated herein, the event of bankruptcy constituted a change in control event under the WaMu CIC Agreement and triggered an acceleration of the payment of the retention bonus under the terms of the Replacement Special Retention Bonus.

**Claim 5. Alternate Claim - Severance Benefits Payment Pursuant to the Providian Agreement**

To the extent that it is determined that WMI is found not to be the party responsible for the obligations under the Replacement Special Retention Opportunity, then Claimant is entitled to additional compensation pursuant to the Providian Agreement as follows:

The Providian Agreement had a three-year term commencing on October 1, 2005 (when Washington Mutual acquired Providian) and was still in the effect on September 25, 2008. The Providian Agreement contains a severance provision which was triggered as a result of termination of Claimant’s employment. Claimant was employed by Washington Mutual at the time Washington Mutual Bank was placed into receivership and its assets transferred to J.P. Morgan Chase. As a result, Claimant became an employee of J.P. Morgan Chase and his

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<sup>3</sup> Claimant has requested a copy of the February 13, 2008 Special Bonus Opportunity award from WMILT, but it has not been produced to date.

<sup>4</sup> See **Exhibit B**.



**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: David A. Tomlinson**

**Social Security No. XXX-XX-6135**

employment with Washington Mutual was effectively terminated, triggering the vesting of the severance payment rights to Claimant.

If WMI is deemed not to be a contracting party to the Replacement Special Retention Bonus, the rights and benefits under the Providian Agreement would remain intact, since WMI is the stated successor to the Providian Agreement. These rights and benefits include severance benefits under Section 6(a) of Providian Agreement, which provides in pertinent part:

**Section 6(a): Obligations of the Corporation upon Termination:** If during the Employment Period, the Corporation ... shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Corporation shall pay to the Executive a lump sum in cash within 30 days of the Date of Termination the aggregate of the following amounts:

\*\*\*

B. the amount equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage [defined in this paragraph]. ..., and

C. a separate lump-sum payment equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage and (3) the Retirement Contribution Percentage [defined], and

\*\*\*

The amount due Claimant is calculated by applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Briefly summarized, the amounts due to Claimant under the paragraphs quoted above yields the following figures:

	<b><i>Severance Due = One Year Bonus + One Year Salary</i></b>	<b><u>Calculation</u></b>
<i>Ix</i>	<i>[Sec. 6(a)(i)(B) calculation is the number I x (the sum of below)</i>	
<hr/>		
	<b><i>Annual Base Salary</i></b>	<b>\$ 405,000.00</b>

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+ **Annual Base Salary  
x Bonus Percentage\*** \$ 636,608.11

\* Bonus percentage equals  
157.19%

[Percentage calculated  
under Section 6(a)(i)(B) of  
the Providian Agreement by  
dividing highest pre-merger  
bonus (\$502,999.00 in 2005)  
by highest pre-merger salary  
(\$320,000.00 in 2005)]

**Subtotal**

**\$ 1,041,608.11**

**Retirement  
Contribution**

**Calculation**

1x [Sec. 6(a)(i)(C) calculation  
is the number 1 x (the sum of  
below)

**Annual Base Salary**

**\$ 405,000.00**

+ **Annual Base Salary  
x Bonus Percentage\***

**\$ 636,608.11**

\* Bonus percentage equals  
187.74.%

X **Retirement  
Percentage\***

\* Retirement percentage  
equals 4.00 %

**4.00 %**

[Retirement percentage as  
reported by Washington  
Mutual to other terminating  
employees as the highest in  
the three years prior to the  
merger Effective Date]

**Subtotal**

**\$ 41,664.32**

**Total Severance  
Subtotal**

**\$ 1,083,272.43**

**Claim 6. Vested Right To Unpaid 2008 Leadership Bonus Guarantee – Pursuant to the Providian Agreement**

On July 21, 2008, Washington Mutual, Inc. provided written notice to Claimant<sup>5</sup> that he was entitled to a guaranteed annual bonus under the 2008 Leadership Bonus Plan equal to the annual bonus provision of the Providian Change in Control Employment Agreement (the “Providian Agreement”). Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received \$502,999.00 (see chart under Claim 1, above. Therefore, Claimant’s guaranteed annual cash bonus under the Providian Agreement totals **\$502,999.00**, which is due and owing to him.

**Claim 7. Lump Sum Payment Under The Washington Mutual Change In Control Agreement**

On December 17, 2007, Claimant executed a Change In Control Agreement drafted by Washington Mutual, Inc. to be effective for employees of its subsidiary corporations (“**WaMu CIC Agreement**”).<sup>6</sup> The WaMu CIC Agreement was in effect on September 25, 2008. The event of placing Washington Mutual Bank into receivership and selling its assets to J.P. Morgan Chase constitutes a change in control under Section 5(f)(5) of the WaMu CIC Agreement since this event resulted in “transfer of all or substantially all of the [Holding Company]’s assets to another Person . . . whether assisted or unassisted, voluntary or involuntary.” Further, because of the receivership and sale, Claimant became an employee of J.P. Morgan Chase, thereby terminating Claimant’s employment with Washington Mutual. This termination triggered severance benefits under section 5(c) and 5(d) which provide:

**Section 5(c): Termination.** . . . . If (i) Employee’s employment is terminated by Washington Mutual or its successor without “cause” (as defined below) upon or within two years after a Change in Control (as defined below) . . . and no cause for Washington Mutual to terminate exists, then:

1. Employee shall be entitled to receive, within five business days after the effective date of such termination . . . , from Washington Mutual or its successor, a lump sum equal to two times Employee’s annual compensation. Notwithstanding the preceding, the amount paid to employee under this subsection (1) shall be offset by any payment received by Employee from the Company or any acquired company pursuant to: (i) a severance or change of control agreement, arrangement or plan, with the exception of any such payment received more than two years before all of the conditions of this Section 5(c) were

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<sup>5</sup> See **Exhibit C.**

<sup>6</sup> See **Exhibit D.**

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satisfied, or (ii) The Workers Authorization Relocation and Notification Act (WARN Act).

\*\*\*

**Section 5(d).** For purposes of Section 5(c), Employee’s “annual compensation” shall include all items of compensation provided by Washington Mutual other than the value of equity rights granted to Employee. Employee’s “annual compensation” shall include the greatest of (i) the total of Employee’s salary and target bonus for the calendar year in which the termination occurs (if established before the termination), (ii) Employee’s salary and actual bonus for the prior calendar year (annualized if Employee was not employed by Washington Mutual for the entire previous calendar year), or (iii) Employee’s salary and actual bonus for the calendar year immediately preceding the year in which the Change in Control occurred (annualized if Employee was not employed by Washington Mutual for the entire such calendar year). Employee’s “annual compensation” shall also include the amount of the contributions made or anticipated to have been made on Employee’s behalf to benefit plans for the calendar year in which the termination occurs, including without limitation contributions to pension plans and plans qualified under Section 125 of the Internal Revenue Code of 1986 (cafeteria plans), provided that “annual compensation” shall not include contributions to any plans that contain provisions that provide benefits, service credit, or accelerated vesting upon a change in control.

\*\*\*

The total value of the claim owed on the basis of this contract term is determined by the following equation based on the provisions cited above:

<b><i>Obligations Under Section 5(c)(1) and (d) of the Washington CIC Agreement</i></b>	<b><i>Lump Sum Calculation</i></b>
	<b>\$ 1,991,125.60</b>
<b><i>“Lump Sum” Severance Payment [Sec. 5(c)(1) and (d)]</i></b>	<i>*Annual Compensation of \$405,000.00 (salary) + \$502,999.00 (Bonus guarantee)+\$87,563.80 (Benefits) x 2</i>
<b><i>Subtotal</i></b>	<b>\$ 1,991,125.60</b>

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As such, Claimant is entitled to a lump sum payment equal to \$1,991,125.60, pursuant to Sections 5(c)(1) and 5(d) of the WaMu CIC Agreement. Claimant is therefore entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. 101 et seq., corresponding to the value Claimant's severance compensation under the WaMu CIC Agreement.

**Claim 8. Alternate Claim – Washington Mutual, Inc. Severance Plan**

To the extent that it is determined that a change in control did not occur or WMI is found not to be responsible for obligations under the WaMu CIC Agreement, then Claimant is entitled to severance pay in the amount of \$155,769.23 pursuant to the WaMu Severance Plan.

**Claim 9. Vested Right To Account Balance Under WMI Supplemental Executive Retirement Accumulation Plan (SERAP)**

Claimant was a participant in the Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan (SERAP) with an account balance of \$47,100.19 as of September 26, 2008<sup>7</sup>. WMILT paid a portion of this vested of balance in February, 2013. This payment was in the amount of \$11,770.97 only.

Upon the merger of Providian into Washington Mutual, the SERAP was amended by the Amendment No. 1 adopted September 30, 2005 (the "Amendment No. 1") to provide for plan entry dates and prior service credits.<sup>8</sup> Pursuant to Amendment No. 1, the definition of "Executive Service" was amended by adding the following language to the end of Section 2.20:

Employees who on September 30, 2005 were employed by Providian Financial Corporation, Providian National Bank or any affiliate or subsidiary thereof and who on October 1, 2005 became employed by the Employer shall, after April 1, 2006, be credited with Service for service with Providian Financial Corporation, Providian Nation Bank or their affiliates or subsidiaries, but only to the extent that such service occurred after December 31, 2003.

Pursuant to Amendment No. 1, Claimant was entitled to up to two (2) additional years of service (for their service with Providian) dating back to Jan. 1, 2004.

In addition, pursuant to Section 6(a)(i)(D) of the Providian Agreement, Claimant was entitled to a payment equal to the unvested portion of the qualified and non-qualified retirement contribution account, in addition to any vested amounts due under such plans. This would include the unvested balances under the SERAP. Accordingly, Claimant is entitled to the

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<sup>7</sup> See Exhibit E.

<sup>8</sup> See Exhibit F.

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remainder of his balance in the SERAP in the amount of **\$35,329.22** (\$47,100.19 balance minus payment of \$11,770.97).

**Claim 9. Recovery of Attorneys' Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys' fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (*regardless of the outcome*). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys' fees and expenses in costs in connection with the Claim, the bankruptcy process, the confirmation this Objection and the Adversary Proceeding. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant's rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Similarly, Section 9 of the WaMu CIC Agreement permits the recovery of attorneys' fees, costs and expenses. Attorneys' fees, costs and expenses are also recoverable under ERISA and Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys' fees, costs and expenses, in an amount according to proof.

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**Total Claim Value Chart**

<b>Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 341,003.00</b>
<b>Claim 2. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement</b>	<b>\$ 34,219.28</b>
<b>Claim 3. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 75,666.58</b>
<b>Claim 4. Special Retention Bonus</b>	<b>\$ 211,000.00</b>
<b>Claim 5. Alternate Claim - Severance Benefits Payment Pursuant to the Providian Agreement (\$1,083,272.43)</b>	<b>Alternate Only – Per Above</b>
<b>Claim 6. Vested Right To Guaranteed Leadership Bonus Plan Payment Per Providian CIC Agreement</b>	<b>\$ 502,999.00</b>
<b>Claim 7. Lump Sum Payment Under the Washington Mutual Change In Control Agreement</b>	<b>\$1,991,125.60</b>
<b>Claim 8. Alternate Claim – WaMu Severance Plan (\$155,769.23)</b>	<b>Alternate Only – per above</b>
<b>Claim 9. Vested Rights To Supplemental Executive Retirement Accumulation Plan (SERAP) Account Balance</b>	<b>\$35,329.22</b>
<b>Claim 10. Attorneys' Fees, Costs and Expenses</b>	<b>According to Proof</b>

**TOTAL CLAIM VALUE**

**\$3,191,342.68**

**\*PLUS ATTORNEYS'  
FEES, COSTS & EXPENSES**

# Exhibit 17





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

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

If the documents are not available, please explain: **WMILT is in possession of Claimant's Personnel records and payroll information**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

**DEFINITIONS****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**INFORMATION****Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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

**ATTACHMENT A – Amended Proof of Claim**

Mary Beth Davis (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant remained employed by Washington Mutual up through and including the termination of Claimant’s employment following its subsidiary Bank’s placement into receivership. A table summarizing the calculations supporting Claimant’s total claim of **\$2,788,406.27, plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement**

In 2004, prior to the Providian-Washington Mutual Merger, Providian offered the Claimant and other key executives a Change of Control Employment Agreement (“**Providian Agreement**”) to provide job security and financial incentives to remain with the company in the event of corporate acquisition.<sup>1</sup> The Providian Agreement was signed on January 27, 2004, and the employment terms became effective at the time Washington Mutual acquired Providian on or about October 1, 2005.

Claimant would be entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. that is commensurate with the value of Claimant’s bonus wages that were vested and unpaid prior to September 26, 2008, under Section 4(b)(ii) of the Providian Agreement. The section provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

\*\*\*

Arriving at the amount due Claimant is simply a matter of applying her individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received the following total bonus amount:

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<sup>1</sup> See **Exhibit A**.

<u>January 2005 Bonus Amount<sup>2</sup></u>	<u>Calculation</u>
<i>Cash</i>	\$ 175,000.00
<i>Stock Options</i>	\$ 153,340.00
<i>Restricted Stock</i>	\$ 84,278.00
<b>Cash Bonus Total</b>	<b>\$412,618.00</b>

In calculating Claimant's annual cash bonus after the merger, Washington Mutual erred by failing to include the value of the equity previously awarded to Claimant. When the value of the equity award is properly included in the calculation, Claimant's guaranteed annual cash bonus under the Providian Agreement totals \$412,618.00. The amounts due to Claimant under the paragraphs quoted above yield the figures below, which are contrasted to the amounts Washington Mutual actually paid Claimant at the time of payment of the annual bonuses. Washington Mutual's calculation error resulted in the following underpayment of bonus wages **\$649,094.08** as detailed below.

<u>Obligations Under Section 4(b)(ii) of the Providian Agreement</u>	<u>Amount Paid By WaMu</u>	<u>Actual Entitlement Per Section 4(b)(ii)</u>	<u>Unpaid Bonus Wage Balance</u>
<i>Annual Bonus for 2005 (as paid in Jan. 2006)</i>	\$175,000.00	\$412,618.00	\$237,618.00
<i>Annual Bonus for 2006 (as paid in Jan. 2007)</i>	\$238,759.92	\$412,618.00	\$173,858.08
<i>Annual Bonus for 2007 (as paid in Jan. 2008)</i>	\$175,000.00	\$412,618.00	\$237,618.00
<b>SUBTOTAL</b>			<b>\$649,094.08</b>

**Claim 2. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement**

As set forth above, Washington Mutual underpaid Claimant's bonus wages for the 2005 – 2007 performance years. Under Section 8 of the Providian Agreement, Claimant was entitled to

<sup>2</sup> See Exhibit B.

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interest at the applicable federal rate (“AFR”) for the unpaid wage balance. This section provides:

**Section 8: Full Settlement.** ... The Corporation agrees to pay, to the full extent permitted by law, ... in each case interest, on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended ...

Therefore, Claimant had a vested right to interest on the unpaid bonus wages prior to September 26, 2008, as outlined below:

<b><i>Unpaid Portion of 2005 Bonus Payable January 2006</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2006 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2005 Bonus Payment</i></b> <i>[calculated from Jan. 2006 through Sept. 26, 2008 only]</i>
<b>\$237,618.00</b>	<b>2.667 Years</b>	<b>4.68%</b>	<b>\$31,197.85</b>
<b><i>Unpaid Portion of 2006 Bonus Payable January 2007</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2007 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2006 Bonus Payment</i></b> <i>[calculated from Jan. 2007 through Sept. 26, 2008 only]</i>
<b>\$173,858.08</b>	<b>1.667 Years</b>	<b>4.68%</b>	<b>\$13,935.00</b>
<b><i>Unpaid Portion of 2007 Bonus Payable January 2008</i></b> <i>[Sec. 8]</i>	<b><i>No. of Years Delayed</i></b> <i>[Jan. 2008 – Sept. 2008]</i>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2007 Bonus Payment</i></b> <i>[calculated from Jan. 2008 through Sept. 26, 2008 only]</i>
<b>\$237,618.00</b>	<b>.667 Years</b>	<b>4.41%</b>	<b>\$7,011.52</b>
<b>SUBTOTAL</b>			<b>\$ 52,144.37</b>

**Claim 3. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement**

Because Washington Mutual failed to pay, in full, the bonus wages that claimant was entitled to under the Providian Agreement (as detailed above), Claimant had a vested right, prior to September 26, 2008, to a wage penalty equal to 30 days wages pursuant to Labor Code Sections 1201 and 1203. This wage penalty is equal to **\$56,676.50** [(Annual salary of \$267,500.00 + Annual bonus of \$412,618.00 divided by 360 days) x 30 days].

**Claim 4. Special Retention Bonus**

On February 13, 2008, Washington Mutual, Inc. provided written notice to Claimant that she was entitled to a special retention bonus in the amount of \$535,000.00 which was to vest and become fully payable on January 31, 2010.<sup>3</sup> On August 7, 2008, Washington Mutual, Inc. provided Claimant with a replacement Special Bonus Opportunity (the “Replacement Special Retention Bonus”) that indicated that it was intended to supersede “the bonus described in the agreement dated February 13, 2008 (“Prior Bonus Agreement”) *as well as the Providian Change in Control Agreement that you signed (“Providian Agreement”)*. According to the Replacement Special Retention Bonus, Claimant was entitled to a special retention bonus in the total amount of \$484,000.00. Of this total amount, \$358,000 became fully vested and was paid on or about September 1, 2008. The remaining **\$126,000** was to vest and become fully payable on July 1, 2009.<sup>4</sup> As stated herein, the event of bankruptcy constituted a change in control event under the WaMu CIC Agreement and triggered an acceleration of the payment of the retention bonus under the terms of the Replacement Special Retention Bonus.

**Claim 5. Alternate Claim - Severance Benefits Payment Pursuant to the Providian Agreement**

To the extent that it is determined that WMI is found not to be the party responsible for the obligations under the Replacement Special Retention Opportunity, then Claimant is entitled to additional compensation pursuant to the Providian Agreement as follows:

The Providian Agreement had a three-year term commencing on October 1, 2005 (when Washington Mutual acquired Providian) and was still in the effect on September 25, 2008. The Providian Agreement contains a severance provision which was triggered as a result of termination of Claimant’s employment. Claimant was employed by Washington Mutual at the time Washington Mutual Bank was placed into receivership and its assets transferred to J.P. Morgan Chase. As a result, Claimant became an employee of J.P. Morgan Chase and her

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<sup>3</sup> See Exhibit C.

<sup>4</sup> See Exhibit D.

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**Claimant/Creditor: Mary Beth Davis**

**Social Security No. XXX-XX-1092**

employment with Washington Mutual was effectively terminated, triggering the vesting of the severance payment rights to Claimant.

If WMI is deemed not to be a contracting party to the Replacement Special Retention Bonus, the rights and benefits under the Providian Agreement would remain intact, since WMI is the stated successor to the Providian Agreement. These rights and benefits include severance benefits under Section 6(a) of Providian Agreement, which provides in pertinent part:

**Section 6(a): Obligations of the Corporation upon Termination:** If during the Employment Period, the Corporation ... shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Corporation shall pay to the Executive a lump sum in cash within 30 days of the Date of Termination the aggregate of the following amounts:

\*\*\*

B. the amount equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage [defined in this paragraph]. ..., and

C. a separate lump-sum payment equal to the product of (1) one and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage and (3) the Retirement Contribution Percentage [defined], and

\*\*\*

The amount due Claimant is calculated by applying her individual financial data to the formulae specified in the Providian Agreement and calculating the result. Briefly summarized, the amounts due to Claimant under the paragraphs quoted above yields the following figures:

	<b><i>Severance Due = One Year Bonus + One Year Salary</i></b>	<b><u>Calculation</u></b>
<i>Ix</i>	<i>[Sec. 6(a)(i)(B) calculation is the number I x (the sum of below)]</i>	
	<hr/> <b><i>Annual Base Salary</i></b>	<b>\$ 267,500.00</b>



**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Mary Beth Davis**

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+ **Annual Base Salary  
x Bonus Percentage\*** \$ 441,501.26

\* Bonus percentage equals  
165.05%

[Percentage calculated  
under Section 6(a)(i)(B) of  
the Providian Agreement by  
dividing highest pre-merger  
bonus (\$412,618.00 in 2005)  
by highest pre-merger salary  
(\$250,000.00 in 2005)]

**Subtotal**

**\$ 709,001.26**

**Retirement  
Contribution**

**Calculation**

1x [Sec. 6(a)(i)(C) calculation  
is the number 1 x (the sum of  
below)

**Annual Base Salary**

**\$ 267,500.00**

+ **Annual Base Salary  
x Bonus Percentage\***

**\$ 441,501.26**

\* Bonus percentage equals  
165.05.%

X **Retirement  
Percentage\***

\* Retirement percentage  
equals 4.00 %

**4.00 %**

[Retirement percentage as  
reported by Washington  
Mutual to other terminating  
employees as the highest in  
the three years prior to the  
merger Effective Date]

**Subtotal**

**\$ 28,360.05**

**Total Severance  
Subtotal**

**\$ 737,361.31**

**Claim 6. Vested Right To Unpaid 2008 Leadership Bonus Guarantee – Pursuant to the Providian Agreement**

On July 21, 2008, Washington Mutual, Inc. provided written notice to Claimant<sup>5</sup> that she was entitled to a guaranteed annual bonus under the 2008 Leadership Bonus Plan equal to the annual bonus provision of the Providian Change in Control Employment Agreement (the “Providian Agreement”). Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received \$412,618.00 (see chart under Claim 1, above. Therefore, Claimant’s guaranteed annual cash bonus under the Providian Agreement totals **\$412,618.00**, which is due and owing to her.

**Claim 7. Lump Sum Payment Under The Washington Mutual Change In Control Agreement**

On December 17, 2007, Claimant executed a Change In Control Agreement drafted by Washington Mutual, Inc. to be effective for employees of its subsidiary corporations (“**WaMu CIC Agreement**”).<sup>6</sup> The WaMu CIC Agreement was in effect on September 25, 2008. The event of placing Washington Mutual Bank into receivership and selling its assets to J.P. Morgan Chase constitutes a change in control under Section 5(f)(5) of the WaMu CIC Agreement since this event resulted in “transfer of all or substantially all of the [Holding Company]’s assets to another Person . . . whether assisted or unassisted, voluntary or involuntary.” Further, because of the receivership and sale, Claimant became an employee of J.P. Morgan Chase, thereby terminating Claimant’s employment with Washington Mutual. This termination triggered severance benefits under section 5(c) and 5(d) which provide:

**Section 5(c): Termination.** . . . . If (i) Employee’s employment is terminated by Washington Mutual or its successor without “cause” (as defined below) upon or within two years after a Change in Control (as defined below) . . . and no cause for Washington Mutual to terminate exists, then:

1. Employee shall be entitled to receive, within five business days after the effective date of such termination . . . , from Washington Mutual or its successor, a lump sum equal to two times Employee’s annual compensation. Notwithstanding the preceding, the amount paid to employee under this subsection (1) shall be offset by any payment received by Employee from the Company or any acquired company pursuant to: (i) a severance or change of control agreement, arrangement or plan, with the exception of any such payment received more than two years before all of the conditions of this Section 5(c) were

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<sup>5</sup> See **Exhibit E.**

<sup>6</sup> See **Exhibit F.**

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Mary Beth Davis**

**Social Security No. XXX-XX-1092**

satisfied, or (ii) The Workers Authorization Relocation and Notification Act (WARN Act).

\*\*\*

**Section 5(d).** For purposes of Section 5(c), Employee’s “annual compensation” shall include all items of compensation provided by Washington Mutual other than the value of equity rights granted to Employee. Employee’s “annual compensation” shall include the greatest of (i) the total of Employee’s salary and target bonus for the calendar year in which the termination occurs (if established before the termination), (ii) Employee’s salary and actual bonus for the prior calendar year (annualized if Employee was not employed by Washington Mutual for the entire previous calendar year), or (iii) Employee’s salary and actual bonus for the calendar year immediately preceding the year in which the Change in Control occurred (annualized if Employee was not employed by Washington Mutual for the entire such calendar year). Employee’s “annual compensation” shall also include the amount of the contributions made or anticipated to have been made on Employee’s behalf to benefit plans for the calendar year in which the termination occurs, including without limitation contributions to pension plans and plans qualified under Section 125 of the Internal Revenue Code of 1986 (cafeteria plans), provided that “annual compensation” shall not include contributions to any plans that contain provisions that provide benefits, service credit, or accelerated vesting upon a change in control.

\*\*\*

The total value of the claim owed on the basis of this contract term is determined by the following equation based on the provisions cited above:

<b><u>Obligations Under Section 5(c)(1) and (d) of the Washington CIC Agreement</u></b>	<b><u>Lump Sum Calculation</u></b>
	<b>\$ 1,468,759.68</b>
<b><u>“Lump Sum” Severance Payment</u></b> [Sec. 5(c)(1) and (d)]	*Annual Compensation of \$267,500.00 (salary) + \$412,618.00 (Bonus guarantee)+\$54,261.84 (Benefits) <sup>7</sup> x 2

<sup>7</sup> The figure for Benefits is based upon information presently available to Claimant. She has requested her payroll records from WMILT and reserves the right to seek additional benefit compensation under the WMI CIC Agreement according to proof at the Hearing.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

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<b><i>Subtotal</i></b>	<b>\$ 1,468,759.68</b>
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As such, Claimant is entitled to a lump sum payment equal to **\$1,468,759.68**, pursuant to Sections 5(c)(1) and 5(d) of the WaMu CIC Agreement. Claimant is therefore entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. 101 et seq., corresponding to the value Claimant's severance compensation under the WaMu CIC Agreement.

**Claim 8. Alternate Claim – Washington Mutual, Inc. Severance Plan**

To the extent that it is determined that a change in control did not occur or WMI is found not to be responsible for obligations under the WaMu CIC Agreement, then Claimant is entitled to severance pay in the amount of \$123,461.54 pursuant to the WaMu Severance Plan.

**Claim 9. Vested Right To Account Balance Under WMI Supplemental Executive Retirement Accumulation Plan (SERAP)**

Claimant was a participant in the Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan (SERAP) with an account balance of \$30,702.88 as of September 26, 2008<sup>8</sup>. WMILT paid a portion of this vested of balance in February, 2013. This payment was in the amount of \$7,589.24 only.

Upon the merger of Providian into Washington Mutual, the SERAP was amended by the Amendment No. 1 adopted September 30, 2005 (the "Amendment No. 1") to provide for plan entry dates and prior service credits.<sup>9</sup> Pursuant to Amendment No. 1, the definition of "Executive Service" was amended by adding the following language to the end of Section 2.20:

Employees who on September 30, 2005 were employed by Providian Financial Corporation, Providian National Bank or any affiliate or subsidiary thereof and who on October 1, 2005 became employed by the Employer shall, after April 1, 2006, be credited with Service for service with Providian Financial Corporation, Providian Nation Bank or their affiliates or subsidiaries, but only to the extent that such service occurred after December 31, 2003.

Pursuant to Amendment No. 1, Claimant was entitled to up to two (2) additional years of service (for their service with Providian) dating back to Jan. 1, 2004. Yet, the calculations made by WMI, as represented to Claimant in the Notice on March 11, 2009 signed by Robert Williams

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<sup>8</sup> See Exhibit G.

<sup>9</sup> See Exhibit H.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Mary Beth Davis**

**Social Security No. XXX-XX-1092**

on behalf of WMI (the “Notice”) as being reflected on the books and records of the Debtor, failed to take into account these additional years of Executive Service for the Claimants.<sup>10</sup>

In addition, pursuant to Section 6(a)(i)(D) of the Providian Agreement, Claimant was entitled to a payment equal to the unvested portion of the qualified and non-qualified retirement contribution account, in addition to any vested amounts due under such plans. This would include the unvested balances under the SERAP. Accordingly, Claimant is entitled to the remainder of her balance in the SERAP in the amount of **\$23,113.64** (\$30,702.88 balance minus payment of \$7,589.24).

**Claim 10. Recovery of Attorneys’ Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys’ fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (*regardless of the outcome*). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys’ fees and expenses in costs in connection with the Claim, the bankruptcy process, the confirmation this Objection and the Adversary Proceeding. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant’s rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Similarly, Section 9 of the WaMu CIC Agreement permits the recovery of attorneys’ fees, costs and expenses. Attorneys’ fees, costs and expenses are also recoverable under ERISA and Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys’ fees, costs and expenses, in an amount according to proof.

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<sup>10</sup> See Exhibit I.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Mary Beth Davis**

**Social Security No. XXX-XX-1092**

**Total Claim Value Chart**

<b>Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 649,094.08</b>
<b>Claim 2. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement</b>	<b>\$ 52,144.37</b>
<b>Claim 3. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement</b>	<b>\$ 56,676.50</b>
<b>Claim 4. Special Retention Bonus</b>	<b>\$ 126,000.00</b>
<b>Claim 5. Alternate Claim - Severance Benefits Payment Pursuant to the Providian Agreement (\$737,361.31)</b>	<b>Alternate Only – Per Above</b>
<b>Claim 6. Vested Right To Guaranteed Leadership Bonus Plan Payment Per Providian CIC Agreement</b>	<b>\$ 412,618.00</b>
<b>Claim 7. Lump Sum Payment Under the Washington Mutual Change In Control Agreement</b>	<b>\$1,468,759.68</b>
<b>Claim 8. Alternate Claim – WaMu Severance Plan (\$123,461.54)</b>	<b>Alternate Only – per above</b>
<b>Claim 9. Vested Rights To Supplemental Executive Retirement Accumulation Plan (SERAP) Account Balance</b>	<b>\$23,113.64</b>
<b>Claim 10. Attorneys' Fees, Costs and Expenses</b>	<b>According to Proof</b>

**TOTAL CLAIM VALUE**

**\$2,788,406.27**

**\*PLUS ATTORNEYS' FEES,  
COSTS & EXPENSES**

# Exhibit 18





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

2

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

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

If the documents are not available, please explain: **WMILT is in possession of Claimant's Personnel and Payroll Records**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

**DEFINITIONS****INFORMATION****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Stephen E. Whittaker**

**Social Security No. XXX-XX-2070**

**ATTACHMENT A – Proof of Claim**

Stephen E. Whittaker (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant remained employed by Washington Mutual up through and including the termination of Claimant’s employment following its subsidiary Bank’s placement into receivership. A table summarizing the calculations supporting Claimant’s total claim of **\$1,624,098.00, plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**Claim 1. Lump Sum Payment Under The Washington Mutual Change In Control Agreement**

On September 12, 2007, Claimant executed a Change In Control Agreement drafted by Washington Mutual, Inc. to be effective for employees of its subsidiary corporations (“**WaMu CIC Agreement**”).<sup>1</sup> The WaMu CIC Agreement was in effect on September 26, 2008. The event of placing Washington Mutual Bank into receivership and selling its assets to J.P. Morgan Chase constitutes a change in control under Section 5(f)(5) of the WaMu CIC Agreement since this event resulted in “transfer of all or substantially all of the [Holding Company]’s assets to another Person . . . whether assisted or unassisted, voluntary or involuntary.” Further, because of the receivership and sale, Claimant became an employee of J.P. Morgan Chase, thereby terminating Claimant’s employment with Washington Mutual. This termination triggered severance benefits under section 5(c) and 5(d) which provide:

**Section 5(c): Termination.** . . . . If (i) Employee’s employment is terminated by Washington Mutual or its successor without “cause” (as defined below) upon or within two years after a Change in Control (as defined below) . . . and no cause for Washington Mutual to terminate exists, then:

1. Employee shall be entitled to receive, within five business days after the effective date of such termination . . . , from Washington Mutual or its successor, a lump sum equal to two times Employee’s annual compensation. Notwithstanding the preceding, the amount paid to employee under this subsection (1) shall be offset by any payment received by Employee from the Company or any acquired company pursuant to: (i) a severance or change of control agreement, arrangement or plan, with the exception of any such payment received more than two years before all of the conditions of this Section 5(c) were satisfied, or (ii) The Workers Authorization Relocation and Notification Act (WARN Act).

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**Section 5(d).** For purposes of Section 5(c), Employee’s “annual compensation” shall include all items of compensation provided by Washington Mutual other

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<sup>1</sup> See **Exhibit A.**

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Stephen E. Whittaker**

**Social Security No. XXX-XX-2070**

than the value of equity rights granted to Employee. Employee’s “annual compensation” shall include the greatest of (i) the total of Employee’s salary and target bonus for the calendar year in which the termination occurs (if established before the termination), (ii) Employee’s salary and actual bonus for the prior calendar year (annualized if Employee was not employed by Washington Mutual for the entire previous calendar year), or (iii) Employee’s salary and actual bonus for the calendar year immediately preceding the year in which the Change in Control occurred (annualized if Employee was not employed by Washington Mutual for the entire such calendar year). Employee’s “annual compensation” shall also include the amount of the contributions made or anticipated to have been made on Employee’s behalf to benefit plans for the calendar year in which the termination occurs, including without limitation contributions to pension plans and plans qualified under Section 125 of the Internal Revenue Code of 1986 (cafeteria plans), provided that “annual compensation” shall not include contributions to any plans that contain provisions that provide benefits, service credit, or accelerated vesting upon a change in control.

\*\*\*

The total value of the claim owed on the basis of this contract term is determined by the following equation based on the provisions cited above:

<i><b>Obligations Under Section 5(c)(1) and (d) of the Washington CIC Agreement</b></i>	<i><b><u>Lump Sum Calculation</u></b></i>
<i><b>“Lump Sum” Severance Payment [Sec. 5(c)(1) and (d)]</b></i>	<b>\$ 1,624,098.00</b>
	*Annual Compensation of \$275,400.00 (salary) + \$477,999.00 (Bonus guarantee)+\$58,650.00 (Benefit Plan Contribution) x 2
<i><b>Subtotal</b></i>	<b>\$ 1,624,098.00</b>

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Stephen E. Whittaker**

**Social Security No. XXX-XX-2070**

As such, Claimant is entitled to a lump sum payment equal to \$1,624,098.00, pursuant to Sections 5(c)(1) and 5(d) of the WaMu CIC Agreement. Claimant is therefore entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. 101 et seq., corresponding to the value Claimant's severance compensation under the WaMu CIC Agreement.

**Claim 2. Alternate Claim – Washington Mutual, Inc. Severance Plan**

To the extent that it is determined that a change in control did not occur or WMI is found not to be responsible for obligations under the WaMu CIC Agreement, then Claimant is entitled to severance pay in the amount of \$233,030.77 pursuant to the WaMu Severance Plan.

**Claim 3. Recovery of Attorneys' Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys' fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (*regardless of the outcome*). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys' fees and expenses in costs in connection with the Claim, the bankruptcy process, the confirmation, the Objection and the Adversary Proceeding. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant's rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement.

Similarly, Section 9 of the WaMu CIC Agreement permits the recovery of attorneys' fees, costs and expenses. Attorneys' fees, costs and expenses are also recoverable under ERISA and Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys' fees, costs and expenses, in an amount according to proof.

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**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Stephen E. Whittaker**

**Social Security No. XXX-XX-2070**

**Total Claim Value Chart**

<b>Claim 1. Lump Sum Payment Under the Washington Mutual CIC Agreement</b>	<b>\$1,624,098.00</b>
<b>Claim 2. Alternate Claim – WaMu Severance Plan</b>	<b>Alternate Only – Per Above</b>
<b>Claim 3. Attorneys’ Fees Costs &amp; Expenses</b>	<b>According to Proof</b>

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**TOTAL CLAIM VALUE**

**\$1,624,098.00**

# Exhibit 19





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

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

If the documents are not available, please explain: **WMILT is in possession of Claimant's Personnel and Payroll Records**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

**DEFINITIONS****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**INFORMATION****Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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

**ATTACHMENT A – Proof of Claim**

Stephen E. Whittaker (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant remained employed by Washington Mutual up through and including the termination of Claimant’s employment following its subsidiary Bank’s placement into receivership. A table summarizing the calculations supporting Claimant’s total claim of **\$24,368.16, plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**Claim 1. Vested Right To Account Balance Under WMI Supplemental Executive Retirement Accumulation Plan (SERAP)**

Claimant was a participant in the Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan (SERAP) with an account balance of \$32,490.88 as of September 26, 2008<sup>1</sup>. WMILT paid a portion of this vested of balance in February, 2013. This payment was in the amount of \$8,122.72 only.

Upon the merger of Providian into Washington Mutual, the SERAP was amended by the Amendment No. 1 adopted September 30, 2005 (the “Amendment No. 1”) to provide for plan entry dates and prior service credits.<sup>2</sup> Pursuant to Amendment No. 1, the definition of “Executive Service” was amended by adding the following language to the end of Section 2.20:

Employees who on September 30, 2005 were employed by Providian Financial Corporation, Providian National Bank or any affiliate or subsidiary thereof and who on October 1, 2005 became employed by the Employer shall, after April 1, 2006, be credited with Service for service with Providian Financial Corporation, Providian Nation Bank or their affiliates or subsidiaries, but only to the extent that such service occurred after December 31, 2003.

Pursuant to Amendment No. 1, Claimant was entitled to up to two (2) additional years of service (for their service with Providian) dating back to Jan. 1, 2004. Yet, the calculations made by WMI, as represented to Claimant in the Notice on March 11, 2009 signed by Robert Williams on behalf of WMI (the “Notice”) as being reflected on the books and records of the Debtor, failed to take into account these additional years of Executive Service for the Claimants.<sup>3</sup>

In addition, pursuant to Section 6(a)(i)(D) of the Providian Agreement, Claimant was entitled to a payment equal to the unvested portion of the qualified and non-qualified retirement

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<sup>1</sup> Claimant has requested the SERAP balance and payment information and documentation from WMILT, but none has been provided by WMILT to date.

<sup>2</sup> See **Exhibit A**.

<sup>3</sup> See **Exhibit B**.

contribution account, in addition to any vested amounts due under such plans. This would include the unvested balances under the SERAP.

Accordingly, Claimant is entitled to the remainder of his balance in the SERAP in the amount of \$24,368.16 (\$32,490.88 balance minus payment of \$8,122.72).

**Claim 2. Recovery of Attorneys' Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys' fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (*regardless of the outcome*). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys' fees and expenses in costs in connection with the Claim, the bankruptcy process, the Objection and the Adversary Proceeding. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant's rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Similarly, attorneys' fees, costs and expenses are also recoverable under ERISA and Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys' fees, costs and expenses, in an amount according to proof.

○○○

**Total Claim Value Chart**

<b><i>Claim 1. Vested Rights To Supplemental Executive Retirement Accumulation Plan (SERAP) Account Balance</i></b>	<b><i>\$ 24,368.16</i></b>
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<b><i>Claim 2. Attorneys' Fees, Costs and Expenses</i></b>	<b><i>According to Proof</i></b>
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<b><i>TOTAL CLAIM VALUE</i></b>
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<b><i>\$24,368.16</i></b>
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# Exhibit 20



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

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If the documents are not available, please explain: **WMILT is in possession of Claimant's Personnel and Payroll Records**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

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

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**INFORMATION****Acknowledgment of Filing of Claim**

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**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.



**ATTACHMENT A – Proof of Claim**

Stephen E. Whittaker (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant remained employed by Washington Mutual up through and including the termination of Claimant’s employment following its subsidiary Bank’s placement into receivership. A table summarizing the calculations supporting Claimant’s total claim of **\$1,918,717.95, plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement**

In 2004, prior to the Providian-Washington Mutual Merger, Providian offered the Claimant and other key executives a Change of Control Employment Agreement (“**Providian Agreement**”) to provide job security and financial incentives to remain with the company in the event of corporate acquisition.<sup>1</sup> The Providian Agreement was signed on January 27, 2004, and the employment terms became effective at the time Washington Mutual acquired Providian on or about October 1, 2005.

Claimant would be entitled to and hereby claims a share of the value of the defaulted company pursuant to 11 U.S.C. §101 et seq. that is commensurate with the value of Claimant’s bonus wages that were vested and unpaid prior to September 26, 2008, under Section 4(b)(ii) of the Providian Agreement. The section provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

\*\*\*

Arriving at the amount due Claimant is simply a matter of applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received the following total bonus amount:

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<sup>1</sup> See **Exhibit A.**

<u>January 2005 Bonus Amount<sup>2</sup></u>	<u>Calculation</u>
<i>Cash</i>	<i>\$250,000.00</i>
<i>Stock Options</i>	<i>\$147,026.00</i>
<i>Restricted Stock</i>	<i>\$ 80,973.00</i>
<b><i>Cash Bonus Total</i></b>	<b><i>\$477,999.00</i></b>

In calculating Claimant's annual cash bonus after the merger, Washington Mutual erred by failing to include the value of the equity previously awarded to Claimant. When the value of the equity award is properly included in the calculation, Claimant's guaranteed annual cash bonus under the Providian Agreement totals \$477,999.00. The amounts due to Claimant under the paragraphs quoted above yield the figures below, which are contrasted to the amounts Washington Mutual actually paid Claimant at the time of payment of the annual bonuses. Washington Mutual's calculation error resulted in the following underpayment of bonus wages **\$683,997.00** as detailed below.

<u>Obligations Under Section 4(b)(ii) of the Providian Agreement</u>	<u>Amount Paid By WaMu</u>	<u>Actual Entitlement Per Section 4(b)(ii)</u>	<u>Unpaid Bonus Wage Balance</u>
<i>Annual Bonus for 2005 (as paid in Jan. 2006)</i>	<b><i>\$250,000.00</i></b>	<b><i>\$477,999.00</i></b>	<b><i>\$227,999.00</i></b>
<i>Annual Bonus for 2006 (as paid in Jan. 2007)</i>	<b><i>\$250,000.00</i></b>	<b><i>\$477,999.00</i></b>	<b><i>\$227,999.00</i></b>
<i>Annual Bonus for 2007 (as paid in Jan. 2008)</i>	<b><i>\$250,000.00</i></b>	<b><i>\$477,999.00</i></b>	<b><i>\$227,999.00</i></b>
<b>SUBTOTAL</b>			<b>\$683,997.00</b>

<sup>2</sup> Claimant has requested his 2005 Compensation Statement from WMILT, but it has not been provided to date. Claimant reserves the right to seek additional amounts according to proof at the Hearing.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Stephen E. Whittaker**

**Social Security No. XXX-XX-2070**

**Claim 2. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement**

As set forth above, Washington Mutual underpaid Claimant's bonus wages for the 2005 – 2007 performance years. Under Section 8 of the Providian Agreement, Claimant was entitled to interest at the applicable federal rate ("AFR") for the unpaid wage balance. This section provides:

**Section 8: Full Settlement.** ... The Corporation agrees to pay, to the full extent permitted by law, ... in each case interest, on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended ...

Therefore, Claimant had a vested right to interest on the unpaid bonus wages prior to September 26, 2008, as outlined below:

<b><i>Unpaid Portion of 2005 Bonus Payable January 2006 [Sec. 8]</i></b>	<b><i>No. of Years Delayed [Jan. 2006 – Sept. 2008]</i></b>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2005 Bonus Payment [calculated from Jan. 2006 through Sept. 26, 2008 only]</i></b>
<b>\$227,999.00</b>	<b>2.667 Years</b>	<b>4.68%</b>	<b>\$29,934.93</b>
<b><i>Unpaid Portion of 2006 Bonus Payable January 2007 [Sec. 8]</i></b>	<b><i>No. of Years Delayed [Jan. 2007 – Sept. 2008]</i></b>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2006 Bonus Payment [calculated from Jan. 2007 through Sept. 26, 2008 only]</i></b>
<b>\$227,999.00</b>	<b>1.667 Years</b>	<b>4.68%</b>	<b>\$18,274.48</b>
<b><i>Unpaid Portion of 2007 Bonus Payable January 2008 [Sec. 8]</i></b>	<b><i>No. of Years Delayed [Jan. 2008 – Sept. 2008]</i></b>	<b><i>Long-Term AFR/ Compounded Semi- Annually</i></b>	<b><i>Unpaid Interest Accrued On The Delayed 2007 Bonus Payment [calculated from Jan. 2008 through Sept. 26, 2008 only]</i></b>
<b>\$227,999.00</b>	<b>.667 Years</b>	<b>4.41%</b>	<b>\$6,727.79</b>
<b>SUBTOTAL</b>			<b>\$ 54,937.10</b>

**Claim 3. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement**

Because Washington Mutual failed to pay, in full, the bonus wages that claimant was entitled to under the Providian Agreement (as detailed above), Claimant had a vested right, prior to September 26, 2008, to a wage penalty equal to 30 days wages pursuant to Labor Code Sections 1201 and 1203. This wage penalty is equal to **\$62,783.25** [(Annual salary of \$275,400.00 + Annual bonus of \$477,999.00 divided by 360 days) x 30 days].

**Claim 4. Special Retention Bonus**

On February 13, 2008, Washington Mutual, Inc. provided written notice to Claimant that he was entitled to a special retention bonus of \$1,233,000 which was to vest and become fully payable on January 31, 2010.<sup>3</sup> On August 7, 2008, Washington Mutual, Inc. provided Claimant with a replacement Special Bonus Opportunity (the “Replacement Special Retention Bonus”) that indicated that it was intended to supersede “the bonus described in the agreement dated February 13, 2008 (“Prior Bonus Agreement”) *as well as the Providian Change in Control Agreement that you signed (“Providian Agreement”)*. According to the replacement Special Bonus Opportunity, Claimant was entitled to a special retention bonus in the total amount of \$1,117,000.00. Of this total amount, **\$826,000** became fully vested and was to be paid on or about September 1, 2008. The remaining **\$291,000** was to vest and become fully payable on July 1, 2009.<sup>4</sup> The guaranteed payment of **\$826,000** was due and owing to Claimant prior to the bankruptcy and is fully vested. With respect to the second payment of **\$291,000.00**, as stated above, the event of bankruptcy constituted a change in control event under the WaMu CIC Agreement and/or plaintiff’s employment was terminated, thereby triggering an acceleration of the vesting of the second payment under the terms of the offer.

**Claim 5. Recovery of Attorneys’ Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys’ fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (*regardless of the outcome*). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys’ fees and expenses in costs in connection with the Claim, the bankruptcy process, the confirmation this Objection and the Adversary Proceeding. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant’s rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Similarly, Section 9 of the WaMu CIC Agreement permits the recovery of attorneys’ fees, costs and expenses. Attorneys’ fees, costs and expenses are also recoverable under Section 218.5 of the California Labor Code.

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<sup>3</sup> See Exhibit B.

<sup>4</sup> See Exhibit C.

Claimant seeks payment of the attorneys' fees, costs and expenses, in an amount according to proof.

**Claim 6.      Alternate Claims - Severance Benefits Payment and Accrued 2008 Bonus Payment Pursuant to the Providian Agreement**

To the extent that it is determined that WMI is found not to be the party responsible for the obligations under the Replacement Special Bonus Opportunity, then Claimant is entitled to additional compensation pursuant to the Providian Agreement as follows:

**A. Alternate Claim - Accrued Guaranteed Bonus Payment Pursuant to the Providian Agreement**

As set forth above, the Providian Agreement entitled Claimant to an annual bonus, paid in cash, equal to \$477,999.00. The Replacement Special Bonus Opportunity intended to replace and supersede (as of 2008) the benefits payable under the Providian Agreement. If the Replacement Special Bonus Opportunity is determined not to be a contractual obligation of WMI, then Claimant would be entitled to a bonus payment, pursuant to the Providian Agreement, as pro-rated up to September 26, 2008, as follows:

<u>Obligations Under Section 4(b)(ii) of the Providian Agreement</u>	<u>Amount Paid By WaMu</u>	<u>Actual Entitlement Per Section 4(b)(ii)</u>	<u>Unpaid Bonus Wage Balance</u>
<b>Pro-rated Annual Bonus for 2008 (pro-rated up to Sept. 26, 2008 only)</b>	<b>\$0*</b>	<b>\$350,994.67</b>	<b>\$350,994.67</b>
	<i>* Any payment made by Chase not applied - No offset permitted under Providian Agreement</i>		
<b>Pro-rated Bonus Payment</b>			<b>\$350,994.67</b>

**B. Alternate Claim - Severance Benefits Payment Pursuant to the Providian Agreement**

The Providian Agreement had a three-year term commencing on October 1, 2005 (when Washington Mutual acquired Providian) and was still in the effect on September 25, 2008. The Providian Agreement contains a severance provision which was triggered as a result of termination of Claimant's employment. Claimant was employed by Washington Mutual at the time Washington Mutual Bank was placed into receivership and its assets transferred to J.P. Morgan Chase. As a result, Claimant became an employee of J.P. Morgan Chase and his employment with Washington Mutual was effectively terminated, triggering the vesting of the severance payment rights to Claimant.

If WMI is deemed not to be a contracting party to the Replacement Special Bonus Opportunity, the rights and benefits under the Providian Agreement would remain intact, since WMI is the stated successor to the Providian Agreement. These rights and benefits include severance benefits under Section 6(a) of Providian Agreement, which provides in pertinent part:

**Section 6(a): Obligations of the Corporation upon Termination:** If during the Employment Period, the Corporation ... shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Corporation shall pay to the Executive a lump sum in cash within 30 days of the Date of Termination the aggregate of the following amounts:

\*\*\*

B. the amount equal to the product of (1) *two* and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage [defined in this paragraph]. ..., and

C. a separate lump-sum payment equal to the product of (1) *two* and (2) the sum of (x) the Executive's Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage and (3) the Retirement Contribution Percentage [defined], and

\*\*\*

The amount due Claimant is calculated by applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Briefly summarized, the amounts due to Claimant under the paragraphs quoted above yields the following figures:

<b><i>Severance Due = One Year Bonus + One Year Salary</i></b>	<b><u>Calculation</u></b>
<i>[Sec. 6(a)(i)(B) calculation is the number 2 x (the sum of below)</i>	
<hr/> <b><i>Annual Base Salary</i></b>	<b>\$ 275,400.00</b>
<b>+ <i>Annual Base Salary x Bonus Percentage*</i></b>	<b>\$ 526,563.70</b>
<b>* <i>Bonus percentage equals 191.20% [Percentage calculated]</i></b>	

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**  
**Claimant/Creditor: Stephen E. Whittaker**  
**Social Security No. XXX-XX-2070**

*under Section 6(a)(i)(B) of the Providian Agreement by dividing highest pre-merger bonus (\$477,999.00 in 2005) by highest pre-merger salary (\$250,000.00 in 2005)]*

X multiplier of 2 2

<b>Subtotal</b>	<b>\$ 1,603,927.40</b>
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<b><u>Retirement Contribution</u></b>	<b><u>Calculation</u></b>
<i>[Sec. 6(a)(i)(C) calculation is the number 2 x (the sum of below)</i>	

<b>Annual Base Salary</b>	\$ 275,400.00
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+ <b>Annual Base Salary x Bonus Percentage*</b>	\$ 526,563.70
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*\* Bonus percentage equals 191.20.%*

X <b>Retirement Percentage*</b>	4.00 %
<i>* Retirement percentage equals 4.00 %</i>	
<i>[Retirement percentage as reported by Washington Mutual to other terminating employees as the highest in the three years prior to the merger Effective Date]</i>	

X multiplier of 2 2

<b>Subtotal</b>	<b>\$ 64,157.10</b>
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<b>Total Severance Subtotal</b>	<b>\$ 1,668,084.50</b>
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Debtor: Washington Mutual, Inc. 08-12229 (MFW)

Claimant/Creditor: Stephen E. Whittaker

Social Security No. XXX-XX-2070

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**Total Claim Value Chart**

<i>Claim 1. Vested Rights To Unpaid Bonus Wages Under the Providian Agreement</i>	<i>\$ 683,997.60</i>
<i>Claim 2. Vested Rights To Accrued Interest Up To September 26, 2008, On Unpaid Bonus Wages Under The Providian Agreement</i>	<i>\$ 54,937.10</i>
<i>Claim 3. Vested Right To Labor Code Penalty Prior to September 26, 2008 Resulting From Unpaid Bonus Wages Under the Providian Agreement</i>	<i>\$ 62,783.25</i>
<i>Claim 4. Special Retention Bonus</i>	<i>\$ 1,117,000.00</i>
<i>Claim 5. Attorneys' Fees, Costs and Expenses</i>	<i>According to Proof</i>
<i>Claim 6. A. Alternate Claim for Accrued Guaranteed Bonus Payment Pursuant to the Providian Agreement (\$350,994.67)</i>	<i>Alternate Only – Per Above</i>
<i>B. Alternate Claim for Severance Benefits Payment Pursuant to the Providian Agreement (\$1,668,084.50)</i>	

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**TOTAL CLAIM VALUE**

**\$1,918,717.95**



# Exhibit 21



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

2

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

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

If the documents are not available, please explain: **WMILT is in possession of Claimant's Personnel and Payroll Records**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

**DEFINITIONS****INFORMATION****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Stephen E. Whittaker**

**Social Security No. XXX-XX-2070**

**ATTACHMENT A – Proof of Claim**

Stephen E. Whittaker (“Claimant”) was an executive with Providian Financial Corporation when Providian merged with Washington Mutual on or about October 1, 2005. Claimant remained employed by Washington Mutual up through and including the termination of Claimant’s employment following its subsidiary Bank’s placement into receivership. A table summarizing the calculations supporting Claimant’s total claim of **\$477,999.00 plus attorneys’ fees, costs and expenses**, is found at the end of this attachment.

**Claim 1. Vested Right To Unpaid 2008 Leadership Bonus Guarantee – Pursuant to the Providian Agreement**

On July 21, 2008, Washington Mutual, Inc. provided written notice to Claimant<sup>1</sup> that he was entitled to a guaranteed annual bonus under the 2008 Leadership Bonus Plan equal to the annual bonus provision of the Providian Change in Control Employment Agreement (the “Providian Agreement”).<sup>2</sup>

The annual bonus section of the Providian Agreement provides:

**Section 4(b)(ii): Annual Bonus.** ...[T]he Executive shall be awarded ... an annual bonus ... in cash at least equal to the highest bonus, paid or payable, ... to the Executive by the Corporation ... (whether in cash, stock or other property ...) ... in respect of the three fiscal years during which the Executive has been employed by the Corporation ... immediately preceding the fiscal year in which the Effective Date occurs ...

\*\*\*

Arriving at the amount due Claimant is simply a matter of applying his individual financial data to the formulae specified in the Providian Agreement and calculating the result. Claimant’s highest bonus prior to the effective date was paid in January 2005 when Claimant received the following total bonus amount:

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<sup>1</sup> See **Exhibit A.**

<sup>2</sup> See **Exhibit B.**

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)  
 Claimant/Creditor: Stephen E. Whittaker  
 Social Security No. XXX-XX-2070**

<u>January 2005 Bonus Amount<sup>3</sup></u>	<u>Calculation</u>
Cash	\$250,000.00
Stock Options	\$147,026.00
Restricted Stock	\$ 80,973.00
<b>Cash Bonus Total</b>	<b>\$477,999.00</b>

Claimant’s guaranteed annual cash bonus under the Providian Agreement totals **\$477,999.00**, which is due and owing to him.

**Claim 2. Recovery of Attorneys’ Fees, Costs and Expenses**

Section 8 of the Providian Agreement provides the payment of attorneys’ fees to the Employee related to any good faith contest of sums owed under the Providian Agreement (**regardless of the outcome**). (Providian Agreement ¶8). Here, Claimant has been forced to retain counsel and incur substantial attorneys’ fees and expenses in costs in connection with the Claim, the bankruptcy process, the confirmation, the Objection and the Adversary Proceeding. All of these fees and expenses have been necessarily incurred in good faith to defend Claimant’s rights flowing from the Providian Agreement and to pursue the sums owed by WMI to Claimant pursuant to the Providian Agreement. Similarly, attorneys’ fees, costs and expenses are also recoverable under Section 218.5 of the California Labor Code.

Claimant seeks payment of the attorneys’ fees, costs and expenses, in an amount according to proof.

○○○

**Total Claim Value Chart**

<b>Claim 1. Vested Right To Guaranteed Leadership Bonus Plan Payment Per Providian CIC Agreement</b>	<b>\$ 477,999.00</b>
<b>Claim 2. Attorneys’ Fees, Costs and Expenses</b>	<b>According to Proof</b>

<b>TOTAL CLAIM VALUE</b>	<b>\$477,999.00</b>
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<sup>3</sup> Claimant has requested his 2005 Compensation Statement from WMILT, but it has not been provided to date. Claimant reserves the right to seek additional amounts according to proof at the Hearing.

# Exhibit 22





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

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

If the documents are not available, please explain: **WMILT is in possession of Claimant's payroll records and personnel files**

**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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

Print Name: Stephan Kyle, Esq.

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

Company: Kyle Law Corporation

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

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

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

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

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

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

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

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

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

**3a. Debtor May Have Scheduled Account As:**

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

**3b. Uniform Claim Identifier:**

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

**4. Secured Claim:**

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

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

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

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

**6. Credits:**

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

**7. Documents:**

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

**8. Date and Signature:**

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

**DEFINITIONS****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

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

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

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

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

**Unsecured Claim**

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

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

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

**Redacted**

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

**Evidence of Perfection**

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

**INFORMATION****Acknowledgment of Filing of Claim**

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

**Offers to Purchase a Claim**

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

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Anthony F. Vuoto**

**Social Security No.: XXX-XX-7604**

**ATTACHMENT A – Amended Proof of Claim**

Anthony Vuoto (“Claimant”) was an executive with Washington Mutual, Inc. and was continuously employed by Washington Mutual up through and including his termination date on or about September 25, 2008. Claimant has claims totaling **\$4,073,449.53, plus attorneys’ fees, costs and expenses**, as set forth below.

**Claim 1. Change In Control Payment Under The WMI CIC Or, Alternatively, Severance Benefits Under the Executive Officer Severance Plan**

A. Calculation of Compensation due under Section 6(c)(1) of the WMI Change in Control (CIC) Agreement – See Exhibit “1” attached hereto

Claimant is entitled to a lump sum payment equal 3x his “annual compensation” defined in Section 6(d) of the CIC Agreement, as follows:

<i>Highest Annual Base Salary – Sec. 6(d)(i)</i>	<i>Calendar Year 2007</i>	<i>\$515,000</i>
<i>Highest Actual or Target Bonus – Sec. 6(d)(ii)</i>	<i>Calendar Year 2007</i>	<i>\$664,543.27</i>
<i>Value of Employer Benefit Plan Contributions – Sec. 6(d)(iii)</i>	<i>Calendar Year 2008</i>	<i>\$82,207.82<sup>1</sup></i>
<i>WMI CIC Multiplier</i>	<i>Three (3)</i>	<i>Total Above x 3</i>
<i>Total Lump Sum Payment Under CIC Agreement</i>		<i>\$3,785,253.27, PLUS Attorneys’ Fees, Costs and Expenses Pursuant to Section 13 of the CIC Agreement and Cal. Labor Code Sec. 218.5</i>

B. Alternate Claim – Severance Benefit Under the Executive Officer Severance Plan (“EOSP”) – See Exhibit “2” attached hereto

<sup>1</sup> This figure is based upon information presently available to Claimant. He has requested his payroll records from WMILT and reserves the right to seek additional compensation under the WMI CIC Agreement according to proof at the Hearing.

**Debtor: Washington Mutual, Inc. 08-12229 (MFW)**

**Claimant/Creditor: Anthony F. Vuoto**

**Social Security No.: XXX-XX-7604**

In the event the Court determines that Claimant is not entitled to payment under the WMI CIC Agreement, he would be entitled to a cash severance benefit equal to 1.5 times his annual compensation under the Section 3.1 of the EOSP, calculated as follows:

<i>Base Pay</i>	<i>Calendar Year 2008</i>	<i>\$515,000</i>
<i>Actual Bonus for Year Immediately-Preceding Termination</i>	<i>Calendar Year 2007</i>	<i>\$664,543.27</i>
<i>Severance Plan Multiplier</i>	<i>One and One-Half (1.5)</i>	<i>Total Above x 1.5</i>
<hr/> <i>Total Lump Sum Payment Under CIC Agreement</i>		<i>\$1,769,314.90, PLUS Attorneys' Fees, Costs and Expenses Pursuant to ERISA and Cal. Labor Code Sec. 218.5</i>

**Claim 2. Vested Benefits Under the Executive Target Retirement Income Plan ("ETRIP") – See Exhibit "3" Attached Hereto**

Claimant was a participant in the ETRIP. See March 11, 2009 Notice from the Debtors attached as Exhibit "4" hereto. Contrary to information reflected on the Notice, Claimant is entitled to benefits under the ETRIP as follows:

	<i>Vested Benefit as of September 26, 2008- Sec. 3.4 (1 year or 20%)</i>	<i>\$72,049.06</i>
<i>+</i>	<i>Additional Vesting Credit Upon Change In Control – Sec. 3.5 (3 years or 60%)</i>	<i>\$216,147.20</i>
<hr/> <i>Total Vested Benefit Under ETRIP (4 years or 80%)</i>		<i>\$288,196.26, PLUS Attorneys' Fees, Costs and Expenses Pursuant to Cal. Labor Code Sec. 218.5</i>

**CERTIFICATE OF SERVICE**

I, Michael J. Joyce, hereby certify that on this 17<sup>th</sup> day of May, 2013, I caused copies of the foregoing *Joint Reply of Providian Employee Claimants to WMI Liquidating Trust's Limited Omnibus Opposition to Motions to Amend* to be served on the parties listed below via CM/ECF and/or as otherwise indicated:

**VIA HAND DELIVERY**

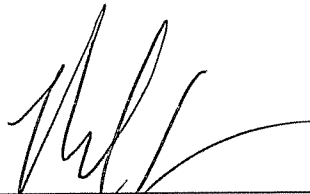
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Michael J. Joyce (No. 4563)