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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 KENNETH Z. SLATER, AS MANAGER
10 OF KT INVESTMENTS, LLC, and
11 EVELYN WEINGARTEN, Derivatively On
12 Behalf of WASHINGTON MUTUAL, INC.,

13 Plaintiffs,

14 -against-

15 KERRY K. KILLINGER, ANNE V.
16 FARRELL, STEPHEN E. FRANK,
17 THOMAS C. LEPPERT, CHARLES M.
18 LILLIS, PHILLIP D. MATTHEWS,
19 REGINA T. MONTOYA, MICHAEL K.
20 MURPHY, MARGARET OSMER-
21 MCQUADE, MARY E. PUGH, WILLIAM
22 G. REED, JR., ORIN C. SMITH, JAMES H.
23 STEVER, STEVEN J. ROTELLA,
24 THOMAS W. CASEY, JAMES B.
25 CORCORAN, DAVID C. SCHNEIDER,
26 JOHN F. WOODS,

Defendants,

-and-

WASHINGTON MUTUAL, INC.

Nominal Defendant.

Civil Action No. _____

DERIVATIVE COMPLAINT

Plaintiffs, Kenneth Z. Slater, as Manager of KT Investments, LLC, and Evelyn Weingarten, by their attorneys, allege upon personal knowledge as to their own acts and

1 upon information and belief as to all other matters, based upon the investigation
2 conducted by counsel which included, *inter alia*, a review of Securities and Exchange
3 Commission (“SEC”) filings, news reports, analyst reports, press releases, and other
4 publicly available documents, as follows:

5
6 **NATURE OF THE ACTION**

7 1. This action is brought derivatively on behalf of nominal defendant Washington
8 Mutual, Inc. (“WaMu” or the “Company”) against certain directors and officers of WaMu for:
9 (i) breach of fiduciary duty in misappropriating and misusing proprietary, non-public, and
10 material corporate information concerning the Company’s inflated financial statements to profit
11 from the artificially inflated prices of WaMu common stock (“WaMu Stock” or “Company
12 Stock”); (ii) failing to properly oversee or implement policies, procedures, and rules to ensure
13 compliance with federal and state laws requiring the dissemination of accurate financial
14 statements, and restricting the misuse of material, non-public information; (iii) causing the
15 Company to be sued for, and exposed to liability for violations of the Securities Exchange Act of
16 1934 (the “Exchange Act”) and the Employee Retirement Income Security Act of 1974
17 (“ERISA”), as well as causing it to be a target of investigations by the SEC and various States’
18 Attorneys General. The relevant time period herein is from at least as early as April 18, 2006
19 through present (the “Relevant Time Period”).

20 2. WaMu is a consumer and small business banking company with operations in the
21 major U.S. markets. Based on its consolidated assets, WaMu is the seventh largest among all
22 U.S. based bank and thrift holding companies.
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1 3. WaMu's earnings are primarily driven by lending to consumers and deposit
2 taking activities which generate net interest income, and by activities that generate non-interest
3 income, including the sale and servicing of loans and providing fee-based services to its
4 customers. In the first three quarters of 2007, WaMu originated \$116 billion in residential
5 mortgage loans.
6

7 4. During the Relevant Time Period, under defendants' direction and management,
8 WaMu exposed itself to a dangerously high level of credit risk, padding its loan portfolio with,
9 *inter alia*, more than \$57 billion of Option-ARM (adjustable-rate mortgage) loans without taking
10 adequate reserves against the same or full disclosure of the circumstances or anticipated
11 consequences of its business practices.
12

13 5. Moreover, during the Relevant Time Period, under defendants' direction and
14 management, WaMu issued materially false and misleading statements regarding the nature and
15 extent of the credit risk exposures to the Company, as well as other related liabilities.
16

17 6. As a result of defendants' false statements, WaMu Stock traded at artificially
18 inflated prices during the Relevant Time Period, reaching a high of \$46.79 per share in mid July
19 2006. WaMu senior executives benefited from the false statements and inflated earnings as their
20 compensation was based largely on the Company's reported financial results. In fact,
21 compensation for the three top executives at WaMu for 2006 was more than \$27 million.
22

23 7. As the credit markets tightened in 2007, defendants nonetheless continued to
24 conceal WaMu's growing exposures. In October 2007, WaMu finally began to acknowledge the
25 exposures faced within its home loan portfolio.
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1 8. On October 5, 2007, the Company issued a press release announcing that “a
2 weakening housing market and disruptions in the secondary market through the end of the third
3 quarter will result in a decline in net income of approximately 75% from the prior year quarter,
4 subject to the finalization of third-quarter 2007 results.” Moreover, “[t]he expected decline in
5 third quarter net income results principally from the following items that are reported on a pre-
6 tax basis”:

8 The third-quarter loan loss provision will be approximately
9 \$975 million, which exceeds net charge-offs for the quarter
10 by approximately \$550 million. The provision reflects
11 ongoing weakness in the housing market, primarily as it
12 affects subprime and home equity loans, as well as growth
13 in the company’s loan portfolio;

14 Downward adjustments of approximately \$150 million,
15 related to approximately \$17 billion in held-for-sale
16 mortgage loans that were transferred to the company’s
17 investment portfolio due to secondary market conditions;

18 Net losses of approximately \$150 million in the company’s
19 trading securities portfolio, including market valuation
20 adjustments on capital markets assets, retained interests on
21 credit cards and other residual interests; and,

22 Impairment losses of approximately \$110 million on
23 investment grade mortgage-backed securities in the
24 company’s available for sale portfolio.

25 9. After the market closed on October 17, 2007, WaMu disclosed that it had suffered
26 a 72% drop in third quarter of 2007 net income and would have to set aside up to \$1.3 billion in
the fourth quarter of 2007 to cover its loan losses. The Company later issued a press release
announcing third quarter 2007 net income of \$210 million, or \$0.23 per diluted share, compared
with third quarter 2006 net income of \$748 million, or \$0.77 per diluted share, and attributed the
decline to a weaker housing market and disruptions in the capital markets.

 10. The day after this news, WaMu Stock dropped from \$33.07 per share to close at
\$30.52.

1 11. On October 31, 2007, a Bloomberg commentary titled *Washington Mutual Shows*
2 *Mortgage Mess Isn't Over*, reported:

3 If you think the worst is over for mortgage lenders, a close look at
4 Washington Mutual Inc.'s balance sheet should dispel that notion
5 pretty quickly.

6 The largest U.S. savings and loan stunned investors on Oct. 17
7 when it said it would set aside as much as \$1.3 billion this quarter
8 to cover anticipated loan losses. The news came the same day
9 Washington Mutual announced a 72 percent drop in third-quarter
10 net income to \$210 million.

11 ...

12 For the third quarter, Washington Mutual recorded \$967 million in
13 loan-loss provisions and \$421 million in net charge-offs. Those
14 and other actions brought the company's loan-loss allowance to
15 \$1.89 billion at Sept. 30, up from \$1.56 billion at June 30.

16 ...

17 As for the fourth quarter, Washington Mutual predicted that
18 provisions would be \$1.1 billion to \$1.3 billion and that charge-
19 offs would increase 20 percent to 40 percent.

20 *To see why even \$1.3 billion in provisions looks light, consider*
21 *Washington Mutual's \$57.86 billion of so-called option-ARM*
22 *loans, which make up 24 percent of Washington Mutual's loan*
23 *portfolio. These adjustable-rate mortgages were popular during*
24 *the housing bubble, because they give customers the option of*
25 *postponing interest payments, which the lender then adds to their*
26 *principal balances.*

As of Sept. 30, the unpaid principal balance on Washington
Mutual's option ARMs exceeded the loans' original principal
amount by \$1.5 billion, meaning the customers owed \$1.5 billion
more in principal than what they originally borrowed. By
comparison, that figure was \$681 million a year earlier, when
Washington Mutual had \$67.14 billion, or 16 percent more, option
ARMs on its books.

Look to the end of 2005, and the trend becomes even starker. Back
then, Washington Mutual had even more option ARMs on its
balance sheet, at \$71.2 billion. Yet the unpaid principal balance
exceeded the original principal amount by only \$160 million -- and
that was up from a mere \$11 million at the end of 2004.

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...

Yet the \$1.1 billion to \$1.3 billion of fourth-quarter provisions that Washington Mutual predicted -- for the company as a whole -- wouldn't even cover the \$1.5 billion of tacked-on principal. The trend among Washington Mutual's option ARMs shows no sign of slowing, either.

...

Then there's the bigger picture. While Washington Mutual's loan-loss allowance rose 22 percent to \$1.89 billion during the 12 months ended Sept. 30, nonperforming assets rose 128 percent to \$5.45 billion. So even if Washington Mutual adds \$1.3 billion in provisions next quarter, its loan-loss allowance still won't be anywhere close to catching up.

To be sure, Washington Mutual executives have some latitude over the timing of the company's loan-loss provisions. Yet they also may have a monetary incentive to push losses into 2008.

Under the formula Washington Mutual's compensation committee will use to determine executive bonuses this year, 40 percent is weighted toward 2007 earnings-per-share targets, according to the company's latest proxy. Goals related to non-interest expense and non-interest income each count for 25 percent, while "customer loyalty" goals count for 10 percent.

...

... [I]t stands to reason that Washington Mutual executives would come closer to hitting the EPS goal if they minimize loan losses this year.

On its Web site, Washington Mutual says the reason it no longer provides EPS forecasts to the public is that "many believe EPS guidance tends to focus management on near-term rather than long-term performance."

The same, of course, is true for executive bonuses that are tied heavily to yearly EPS targets. If Washington Mutual's management is more focused on near-term performance now, as the numbers suggest, this might help explain it. (Emphasis added.)

12. On October 31, 2007, WaMu Stock closed at \$27.88 per share, down 15.7% or \$5.19 per share since the release of the Company's third quarter results.

1 13. On November 1, 2007, News York’s Attorney General issued a press release
2 announcing a lawsuit against one of the nation’s largest real estate appraisal management
3 companies and its parent corporation for colluding with WaMu to inflate the appraisal values of
4 homes. The press release provides, in relevant part:

5 In a scheme detailed in numerous e-mails, eAppraiseIT
6 (“EA”), a subsidiary of First American Corporation (NYSE:
7 FAF), caved to pressure from Washington Mutual (“WaMu”) (NYSE: WM) to use a list of preferred “Proven Appraisers”
8 who provided inflated appraisals on homes. The e-mails also
9 show that executives at EA knew their behavior was illegal,
but intentionally broke the law to secure future business with
WaMu.

10 “The independence of the appraiser is essential to maintaining
11 the integrity of the mortgage industry. First American and
12 eAppraiseIT violated that independence when Washington
13 Mutual strong-armed them into a system designed to rip off
14 homeowners and investors alike,” said Attorney General
15 Cuomo. “The blatant actions of First American and
16 eAppraiseIT have contributed to the growing foreclosure
17 crisis and turmoil in the housing market. By allowing WaMu
18 to hand-pick appraisers who inflated values, First American
19 helped set the current mortgage crisis in motion.”

20 As First American acknowledged in its 2006 annual report,
21 appraisal fraud can damage the entire housing market,
22 including consumers and investors alike. Consumers are
23 harmed because they are misled as to the value of their
24 homes, increasing the risk of foreclosure and hindering their
25 ability to make sound economic decisions. Investors are hurt
26 by such fraud because it skews the value and risk of loans that
are sold in financial markets.

... Over the course of their relationship, between April 2006
and October 2007, EA₁ provided approximately 262,000
appraisals for WaMu.

14. The complaint filed the New York Attorney General against First American
Corporation and First American eAppraiseIt (the “First American Complaint”)² offers further

¹ Office of the New York State Attorney General, *NY Attorney General Sues First American and Its Subsidiary for Conspiring with Washington Mutual to Inflate Real Estate Appraisals*, Nov. 1, 2007, http://www.oag.state.ny.us/press/2007/nov/nov1a_07.html.

² A copy of the First American Complaint filed by the New York State Attorney General is available at <http://www.oag.state.ny.us/press/2007/nov/EA%20Complaint.pdf>.

1 context the reasons why defendants sought to undertake such untoward risk in WaMu's home
2 loan portfolio. In describing the real estate mortgage industry, the First American Complaint sets
3 forth, in relevant part:

4 Most people interested in purchasing or refinancing a home
5 ("borrowers") seek a financial institution (a "lender") to lend
6 them money on the most favorable repayment terms
7 available. Traditionally the lender, as part of agreeing to loan
8 the funds, wanted to ensure that the borrower was able to
9 repay the loan and that the loan was adequately collateralized
10 in case the borrower defaulted. The borrower and the lender
11 had a common interest in accurately valuing the underlying
12 collateral because both wanted to be sure the borrower was
13 not paying too much for the property and would be able to
14 meet the repayment terms, or that – in the event of default and
15 foreclosure – the property value could support the loan.

16 *Today, the landscape of the mortgage industry is quite
17 different from this traditional model.* Rather than holding the
18 mortgage loans, lenders now regularly sell these mortgages in
19 the financial markets, either directly or to investment banks or
20 Government Sponsored Enterprises ("GSEs"), such as the
21 Federal National Mortgage Association ("Fannie Mae") or the
22 Federal Home Loan Mortgage Corporation ("Freddie Mac").
23 The loans are then pooled together, securitized, and sold to
24 the general public as mortgage backed securities. The money
25 that the lender receives for the sale of the mortgage loans or
26 bonds is then used to finance new mortgages, increasing the
lender's profits and aiding its stock price. Today, the vast
majority of mortgage loans are sold to investment banks or
GSEs, leaving the original lender holding far fewer mortgages
in its portfolio.

*This reconfiguration of the way that mortgages are held has
transformed the incentives in the industry. Specifically, it has
the effect of making the lender less vigilant against risky
loans since any risk is quickly transferred to the purchasers
of the loans. Moreover, as the lender does not hold many of
its loans in its portfolio, the lender's interest in ensuring the
accuracy of the appraisal backing the loan is severely
diminished. Even worse, because lenders' profits are
determined by the quantity of loans they successfully close,
and not the quality of those loans, there is an incentive for a
lender to pressure appraisers to reach values that will allow
the loan to close, whether or not the appraisal accurately
reflects the home value.* (Emphasis added.)

15. Following the disclosure, WaMu Stock dropped to close at \$23.81 per share.

1 16. In sum, Defendants failed to disclose the known risks attendant to their actions to
2 WaMu shareholders. The myriad instances of material nondisclosures concern, but are not
3 limited to, the following:

4 a. The nature and extent of credit exposures and anticipated losses from bad
5 loans in its home loan portfolio without adequately disclosing the Company's contingent
6 liabilities or risks related thereto;

7 b. Marketing and extending Option-ARM loans, without adequate
8 consideration of the borrower's ability to pay and with unreasonably high risk of borrower
9 default;

10 c. Failing to adequately disclose the Company's loan loss exposure in its
11 home loan portfolio to WaMu shareholders;

12 d. Operating without the requisite internal controls to determine appropriate
13 loan loss provisions and reserves;

14 e. Understating loan loss provisions that did not properly reflect the risk
15 facing the Company; and

16 f. Engaging in a conspiracy and an unlawful scheme intended to fraudulently
17 inflate the loan-to-value ratios of loans originated for its home loan portfolio.
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19 17. WaMu, instead, issued statements that painted a far rosier picture of the
20 Company's financial performance and prospects.
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22 18. During the Relevant Time Period, WaMu Stock lost approximately 75% of its
23 value from its highest price per share in mid July 2006.
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1 **THE PARTIES**

2 **Plaintiffs**

3 19. Plaintiff, Kenneth Z. Slater, as Manager of KT Investments, LLC, is, and at all
4 relevant times, was the owner of shares of WaMu Stock. Plaintiff Slater resides in Boston,
5 Massachusetts.

6
7 20. Plaintiff, Evelyn Weingarten, is, and at all relevant times, was the owner of shares
8 of WaMu Stock. Plaintiff Weingarten resides in Boca Raton, Florida.

9
10 **Nominal Defendant**

11 21. Nominal defendant Washington Mutual, Inc. is a Washington corporation with its
12 principal executive offices located in Seattle, Washington.

13 **Defendants**

14
15 22. The following defendants were and are members of WaMu’s Board of Directors
16 and senior management team during the Relevant Time Period.

17 23. Defendant Kerry K. Killinger (“Killinger”) is WaMu’s Chairman and Chief
18 Executive Officer (“CEO”). He was President of the Company from 1988 to 2005, and has
19 served as a member of the Board of Directors since 1988. Killinger became the WaMu’s Chief
20 Executive Officer in 1990 and Chairman of the Board of Directors in 1991. Killinger also serves
21 as Chairperson of the Company’s Corporate Development Committee. During the Relevant
22 Time Period, Killinger participated in the issuance of improper statements, including the
23 preparation of the improper press releases and SEC filings, and was quoted in and approved the
24 issuance of the Company’s false and misleading made to the press, securities analysts and
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1 WaMu's shareholders. In 2006, Killinger received \$14,245,859 in compensation from WaMu.
2 Additionally, upon information and belief, during the Relevant Time Period, Killinger sold
3 almost 280,000 shares of WaMu Stock for in excess of \$12.2 million.

4 24. Defendant Anne V. Farrell ("Farrell") has served as a member of WaMu's Board
5 of Directors since 1994. Farrell is the current Chairperson of the Company's Corporate
6 Relations Committee and a member of the Finance Committee. During the Relevant Time
7 Period, Farrell participated in the issuance of improper statements, including the preparation of
8 the improper press releases and SEC filings, and was quoted in and approved the issuance of the
9 Company's false and misleading made to the press, securities analysts and WaMu's
10 shareholders. Upon information and belief, during the Relevant Time Period, Farrell sold more
11 than 1,500 shares of WaMu Stock for in excess of \$68,000.

12 25. Defendant Stephen E. Frank ("Frank") has served as a member of WaMu's Board
13 of Directors since 1997. Frank is the current Chairperson of the Company's Audit Committee
14 and a member of the Corporate Development, Finance and Human Resources Committees.
15 During the Relevant Time Period, Frank participated in the issuance of improper statements,
16 including the preparation of the improper press releases and SEC filings, and was quoted in and
17 approved the issuance of the Company's false and misleading made to the press, securities
18 analysts and WaMu's shareholders.

19 26. Defendant Thomas C. Leppert ("Leppert") has served as a member of WaMu's
20 Board of Directors since 2005. Leppert is also a member of the Audit, Corporate Relations and
21 Governance Committees. During the Relevant Time Period, Leppert participated in the issuance
22 of improper statements, including the preparation of the improper press releases and SEC filings,
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1 and was quoted in and approved the issuance of the Company’s false and misleading made to the
2 press, securities analysts and WaMu’s shareholders.

3 27. Defendant Charles M. Lillis (“Lillis”) has served as a member of WaMu’s Board
4 of Directors since 2005. Lillis is also a member of the Corporate Development, Finance and
5 Human Resources Committees. During the Relevant Time Period, Lillis participated in the
6 issuance of improper statements, including the preparation of the improper press releases and
7 SEC filings, and was quoted in and approved the issuance of the Company’s false and
8 misleading made to the press, securities analysts and WaMu’s shareholders.

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10 28. Defendant Phillip D. Matthews (“Matthews”) has served as a member of WaMu’s
11 Board of Directors since 1998. Matthews is also a member of the Corporate Development,
12 Governance and Human Resources Committees. During the Relevant Time Period, Matthews
13 participated in the issuance of improper statements, including the preparation of the improper
14 press releases and SEC filings, and was quoted in and approved the issuance of the Company’s
15 false and misleading made to the press, securities analysts and WaMu’s shareholders. Upon
16 information and belief, during the Relevant Time Period, Matthews sold more than 1,400 shares
17 of WaMu Stock for in excess of \$64,000.

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19 29. Defendant Regina T. Montoya (“Montoya”) has served as a member of WaMu’s
20 Board of Directors since 2006. Montoya is also a member of the Corporate Relations and
21 Finance Committees. During the Relevant Time Period, Montoya participated in the issuance of
22 improper statements, including the preparation of the improper press releases and SEC filings,
23 and was quoted in and approved the issuance of the Company’s false and misleading made to the
24 press, securities analysts and WaMu’s shareholders.
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1 30. Defendant Michael K. Murphy (“Murphy”) has served as a member of WaMu’s
2 Board of Directors since 1985. Murphy is also a member of the Audit, Corporate Relations and
3 Finance Committees. During the Relevant Time Period, Murphy participated in the issuance of
4 improper statements, including the preparation of the improper press releases and SEC filings,
5 and was quoted in and approved the issuance of the Company’s false and misleading made to the
6 press, securities analysts and WaMu’s shareholders.
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8 31. Defendant Margaret Osmer-McQuade (“Osmer-McQuade”) has served as a
9 member of WaMu’s Board of Directors since 2002. Osmer-McQuade is also a member of the
10 Finance, Governance and Human Resources Committees. During the Relevant Time Period,
11 Osmer-McQuade participated in the issuance of improper statements, including the preparation
12 of the improper press releases and SEC filings, and was quoted in and approved the issuance of
13 the Company’s false and misleading made to the press, securities analysts and WaMu’s
14 shareholders.
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16 32. Defendant Mary E. Pugh (“Pugh”) has served as a member of WaMu’s Board of
17 Directors since 1999. Pugh is the current Chairperson of the Company’s Finance Committee and
18 a member of the Corporate Relations and Governance Committees. During the Relevant Time
19 Period, Pugh participated in the issuance of improper statements, including the preparation of the
20 improper press releases and SEC filings, and was quoted in and approved the issuance of the
21 Company’s false and misleading made to the press, securities analysts and WaMu’s
22 shareholders.
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24 33. Defendant William G. Reed, Jr. (“Reed”) has served as a member of WaMu’s
25 Board of Directors since 1970. Reed is the current Chairperson of the Company’s Governance
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1 Committee and a member of the Audit and Finance Committees. During the Relevant Time
2 Period, Reed participated in the issuance of improper statements, including the preparation of the
3 improper press releases and SEC filings, and was quoted in and approved the issuance of the
4 Company's false and misleading made to the press, securities analysts and WaMu's
5 shareholders.
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7 34. Defendant Orin C. Smith ("Smith") has served as a member of WaMu's Board of
8 Directors since 2005. Smith is also a member of the Audit Committee. During the Relevant
9 Time Period, Smith participated in the issuance of improper statements, including the preparation
10 of the improper press releases and SEC filings, and was quoted in and approved the issuance of
11 the Company's false and misleading made to the press, securities analysts and WaMu's
12 shareholders.
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14 35. Defendant James H. Stever ("Stever") has served as a member of WaMu's Board
15 of Directors since 1991. Stever is the current Chairperson of the Company's Human Resources
16 Committee and a member of the Corporate Development and Corporate Relations Committees.
17 During the Relevant Time Period, Stever participated in the issuance of improper statements,
18 including the preparation of the improper press releases and SEC filings, and was quoted in and
19 approved the issuance of the Company's false and misleading made to the press, securities
20 analysts and WaMu's shareholders.
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22 36. Defendant Steven J. Rotella ("Rotella") has served as WaMu's President and
23 Chief Operating Officer ("COO") since 2005. He has also been a member of the Executive
24 Committee since 2005. During the Relevant Time Period, Rotella participated in the issuance of
25 improper statements, including the preparation of the improper press releases and SEC filings,
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1 and was quoted in and approved the issuance of the Company's false and misleading made to the
2 press, securities analysts and WaMu's shareholders. Upon information and belief, Rotella
3 received \$8,452,994 in compensation from WaMu in 2006. Additionally, upon information and
4 belief, during the Relevant Time Period, Rotella sold more than 21,000 shares of WaMu Stock
5 for in excess of \$950,000.

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7 37. Defendant Thomas W. Casey ("Casey") has served as WaMu's Executive Vice
8 President and Chief Financial Officer ("CFO") since 2002. He has also been a member of the
9 Executive Committee since 2002. During the Relevant Time Period, Casey participated in the
10 issuance of improper statements, including the preparation of the improper press releases and
11 SEC filings, and was quoted in and approved the issuance of the Company's false and
12 misleading made to the press, securities analysts and WaMu's shareholders. Upon information
13 and belief, Rotella received \$4,565,581 in compensation from WaMu in 2006. Additionally,
14 upon information and belief, during the Relevant Time Period, Rotella sold more than 52,000
15 shares of WaMu Stock for in excess of \$2.3 million.

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17 38. Defendant James B. Corcoran ("Corcoran") has served as WaMu's Executive
18 Vice President and President, Retail Banking since 2006. He has also been a member of the
19 Executive Committee since 2006. During the Relevant Time Period, Corcoran participated in
20 the issuance of improper statements, including the preparation of the improper press releases and
21 SEC filings, and was quoted in and approved the issuance of the Company's false and
22 misleading made to the press, securities analysts and WaMu's shareholders. Upon information
23 and belief, during the Relevant Time Period, Corcoran sold more than 1,500 shares of WaMu
24 Stock for in excess of \$68,000.

1 39. Defendant David C. Schneider (“Schneider”) has served as WaMu’s Executive
2 Vice President and President, Home Loans since 2005. He has also been a member of the
3 Executive Committee since 2005. During the Relevant Time Period, Schneider participated in
4 the issuance of improper statements, including the preparation of the improper press releases and
5 SEC filings, and was quoted in and approved the issuance of the Company’s false and
6 misleading made to the press, securities analysts and WaMu’s shareholders. Upon information
7 and belief, during the Relevant Time Period, Schneider sold more than 9,600 shares of WaMu
8 Stock for in excess of \$403,000.

10 40. Defendant John F. Woods (“Woods”) has served as WaMu’s Senior Vice
11 President, Controller and Principal Accounting Officer since 2005. During the Relevant Time
12 Period, Schneider participated in the issuance of improper statements, including the preparation
13 of the improper press releases and SEC filings, and was quoted in and approved the issuance of
14 the Company’s false and misleading made to the press, securities analysts and WaMu’s
15 shareholders. Upon information and belief, during the Relevant Time Period, Woods sold more
16 than 2,600 shares of WaMu Stock for in excess of \$117,000.

18 41. Because of their positions with the Company and substantial ownership of WaMu
19 Stock, defendants Killinger, Farrell, Frank, Leppert, Lillis, Matthews, Montoya, Murphy, Osmer-
20 McQuade, Pugh, Reed, Smith, Stever, Rotella, Casey, Corcoran, Schneider and Woods had the
21 power and authority to cause, and did cause, WaMu to engage in the wrongful conduct
22 complained of herein. These same defendants had the power and authority to control the
23 contents of the Company’s public statements to the financial marketplace, including the false
24 press releases and SEC filings discussed herein.
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1 42. Defendants Killinger, Farrell, Frank, Leppert, Lillis, Matthews, Montoya,
2 Murphy, Osmer-McQuade, Pugh, Reed, Smith and Stever are sometimes collectively referred to
3 as the “Director Defendants”.

4 43. A conspiracy to defraud WaMu and the Company’s shareholders existed among
5 the Director Defendants. The purpose of the conspiracy was to materially inflate the financial
6 results of the Company, garner incentive compensation for themselves and certain Board
7 members based upon the inflated and false financials, and cover up the wrongdoing through
8 further accounting gimmickry.

9 44. Substantial acts in furtherance of the conspiracy took place in Washington
10 including the dissemination of materially false and misleading information in public filings
11 including the Company’s Form 10-Qs and Form 10-Ks and various press releases (collectively
12 “public filings”).

13 45. These public filings contained both materially untrue statements and material
14 omissions and were disseminated throughout the State of Washington to Washington residents.

15 46. These public filings were released and disseminated to the public and sent to
16 WaMu shareholders, including shareholders who live in Washington.

17 47. The participants in the conspiracy knew that certain documents including the
18 Company’s Form 10-Qs and 10-Ks would be sent to Washington residents and that press releases
19 would be disseminated throughout the State. These documents would have substantial effects in
20 Washington in that their material misstatements and omissions would further said conspiracy.
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1 48. Given that Washington residents own WaMu Stock and that these documents
2 were disseminated within the State, both the acts in, and the effects on Washington were a direct
3 and foreseeable result of the conduct in furtherance of the conspiracy.

4 49. All the natural person defendants upon who substantive relief is requested herein,
5 including the Director Defendants, are sometimes referred to collectively as “Defendants.”
6 Defendants are jointly and severally liable for damages as demanded herein.
7

8 50. By reason of their positions at WaMu, each of the Defendants named in this
9 Complaint had access to internal Company documents, reports and other information, including
10 adverse non-public information about its business, financial condition and future prospects, and
11 attended management and/or board of directors meetings. As a result, they were responsible for
12 the truthfulness and accuracy of the Company’s public reports, statements and releases.
13

14 51. By virtue of their high-level positions at WaMu, each of the Defendants directly
15 participated in the management and/or oversight of the Company and was privy to confidential,
16 proprietary information about the Company’s business operations and accounting practices.
17 They were involved or participated in drafting, producing, reviewing, approving and/or
18 disseminating the false and misleading statements alleged in this Complaint and were thus aware
19 that the statements were being made, and approved and ratified them in violation of the federal
20 securities laws.
21

22 52. Defendants Killinger, Farrell, Matthews, Casey, Corcoran, Rotella, Schneider and
23 Woods are sometimes collectively referred to as the “Inside Seller Defendants”.

1
2
3 **JURISDICTION AND VENUE**

4 53. This Court has jurisdiction over the subject matter of this action pursuant to 28
5 U.S.C. § 1332(a) because the derivative plaintiffs and defendants are citizens of different states
6 and the matter in controversy exceeds \$75,000. This action is not a collusive action designed to
7 confer jurisdiction on a Court of the United States that it would not otherwise have. This Court
8 also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

9 54. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and 1391(b)
10 because nominal defendant WaMu is headquartered in this District, and a substantial portion of
11 the transactions and wrongs complained of herein occurred in this District.

12 55. Additionally, there are several suits already pending in this District in which
13 WaMu and some or most of the individual defendants in this action are named as defendants,
14 and, thus, discovery and pretrial proceedings can be coordinated in this District.
15

16 **SUBSTANTIVE ALLEGATIONS**

17 56. During the Relevant Time Period, under Defendants' direction and management,
18 WaMu recklessly engaged in residential lending practices failing to disclose the known risks to
19 such practices and without adequately reserving against anticipated loan losses. Moreover,
20 WaMu engaged in a conspiracy and scheme to fraudulently inflate loan-to-value ratios of
21 residential loans originated for its loan portfolio.
22

23 57. During the Relevant Time Period, under Defendants' direction and management,
24 WaMu materially overstated the Company's profitability through, *inter alia*, the under-reserving
25 against anticipated loan losses and artificial inflation of the Company's financial results.
26

1 58. The Company’s Board of Directors has an Audit Committee tasked to oversee
 2 credit issues. That panel met frequently in 2006 and, in fact, met more frequently than any other
 3 panel of the Board during 2006. The Audit Committee, however, and the WaMu Board of
 4 Directors failed to disclose its findings and concerns to the Company’s shareholders.

5
 6 59. On April 18, 2006, WaMu issued a press release announcing the Company’s
 7 results for the first quarter of 2006. In relevant part, the press release provided:

8 Washington Mutual, Inc. (NYSE: WM) today reported first
 9 quarter 2006 net income of \$985 million, or \$0.98 per diluted
 10 share, compared with net income of \$902 million, or \$1.01
 11 per diluted share, in the first quarter of 2005.

12 Washington Mutual’s Board of Directors declared a cash
 13 dividend of 51 cents per share on the company’s common
 14 stock, up from 50 cents per share in the previous quarter. ...

15 “We are very pleased with our first quarter results,” said
 16 Kerry Killinger, Washington Mutual chairman and chief
 17 executive officer. “The company’s strong performance
 18 demonstrates the benefits of our continued diversification and
 19 enhanced operational focus. This past quarter we had
 20 particularly strong results in Retail Banking and Card
 21 Services.”

22 60. The press release also provided the following first quarter financial summary and
 23 Retail Banking Group results:

24 First Quarter Financial Summary

Financial Summary	Three Months Ended		
	March 31, 2006	December 31, 2005	March 31, 2005
<i>(In millions)</i>			
Income Statement			
Net interest income	\$ 2,117	\$ 2,241	\$ 1,963
Provision for loan and lease losses	82	217	16
Noninterest income	1,725	1,602	1,335
Noninterest expense	2,211	2,278	1,839
Income taxes	564	483	541
Net income	\$ 985	\$ 865	\$ 902
Balance Sheet			
Average total assets	\$ 344,562	\$ 349,931	\$ 308,172

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1 Average total deposits 191,034 196,799 175,185

2 **Profitability Ratios**

3 Return on average common equity 14.18% 12.49% 16.63%
4 Net interest margin 2.75 2.88 2.83
5 Efficiency ratio 57.54 59.27 55.77
6 Nonperforming assets/total assets 0.59 0.57 0.57
7 Tangible equity/total tangible assets 5.85 5.72 5.03

8 **Retail Banking Group**

9 **Selected Segment Information**

Three Months Ended

	March 31, 2006	December 31, 2005	March 31, 2005
<i>(In millions, except accounts and households)</i>			
Net interest income	\$ 1,523	\$ 1,457	\$ 1,401
Provision for loan and leases losses	50	42	37
Noninterest income	741	756	638
Noninterest expense	1,160	1,175	1,058
Net income	660	628	595
Average loans	\$ 189,142	\$ 183,780	\$ 177,635
Average retail deposits	139,062	140,212	132,982
Net change in retail checking accounts	340,157	203,190	202,134
Net change in retail households	210,000	143,000	150,000

10
11
12
13
14
15 61. On May 10, 2006, WaMu filed the Company's Form 10-Q for the quarter ended
16 March 31, 2006 with the SEC, signed and certified by Defendants Killinger and Casey. The 10-
17 Q contained substantially the same statements concerning the Company's operations provided in
18 the April 18, 2006 press release. It also provided that "[t]he Company's financial reporting and
19 accounting policies conform to accounting principles generally accepted in the United States of
20 America ("GAAP")" and, with respect to sufficiency of "controls and procedures":

21 **Disclosure Controls and Procedures**

22
23 The Company's management, with the participation of the
24 Company's Chief Executive Officer and Chief Financial
25 Officer, has evaluated the effectiveness of the Company's
26 disclosure controls and procedures as of the end of the period
covered by this report. Based on such evaluation, the
Company's Chief Executive Officer and Chief Financial
Officer have concluded that, as of the end of such period, the

1 Company's disclosure controls and procedures are effective
2 in recording, processing, summarizing and reporting, on a
3 timely basis, information required to be disclosed by the
4 Company in the reports that it files or submits under the
5 Securities Exchange Act of 1934.

6 Management reviews and evaluates the design and
7 effectiveness of the Company's disclosure controls and
8 procedures on an ongoing basis, which may result in the
9 discovery of deficiencies, and improves its controls and
10 procedures over time, correcting any deficiencies that may
11 have been discovered.

12 Changes in Internal Control Over Financial Reporting

13 Management reviews and evaluates the design and
14 effectiveness of the Company's internal control over financial
15 reporting on an ongoing basis, which may result in the
16 discovery of deficiencies, some of which may be significant,
17 and changes its internal control over financial reporting as
18 needed to maintain their effectiveness, correcting any
19 deficiencies, as needed, in order to ensure the continued
20 effectiveness of the Company's internal controls. There have
21 not been any changes in the Company's internal control over
22 financial reporting during the first quarter of 2006 that have
23 materially affected, or are reasonably likely to materially
24 affect, the Company's internal control over financial
25 reporting. ...

26 62. On July 19, 2006, WaMu issued a press release announcing the Company's
results for the second quarter of 2006. In relevant part, the press release provided:

Washington Mutual, Inc. (NYSE: WM) today reported
second quarter 2006 net income of \$767 million, or \$0.79 per
diluted share, including an after tax adjustment of \$101
million to reflect the pending sale of \$2.6 billion of mortgage
servicing rights and an after tax restructuring charge of \$52
million related to the company's efficiency initiatives.

Net income excluding these two items would have been \$920
million, or \$0.94 per diluted share, compared with net income
of \$844 million, or \$0.95 per diluted share in the second
quarter of 2005.

The company announced today a series of actions it is taking
that will significantly improve the company's market risk
profile, greatly accelerate the achievement of its operating
efficiency goals, and be accretive to earnings in 2006 and
2007.

"Our retail banking and card services businesses produced
excellent results and our business model is performing well in

1 this challenging interest rate environment,” said Kerry
 2 Killinger, Washington Mutual Chairman and Chief Executive
 3 Officer. “The transformational actions we’re taking will
 4 make us an even more diversified bank positioned for
 5 improved financial performance as we move forward.”

6 As part of the company’s Home Loans strategy of focusing
 7 on higher-margin products, driving superior operating
 8 efficiency and reducing its exposure to market risk, the
 9 company entered into a definitive agreement to sell \$2.6
 10 billion of mortgage servicing rights. The pending sale
 11 includes all of the company’s government loan servicing and
 12 a portion of its conforming, fixed-rate servicing, which is
 13 predominantly for single service customers, the majority of
 14 whom are outside the company’s retail footprint. The
 15 pending sale also includes the transfer of the company’s
 16 Milwaukee loan servicing operation and approximately 800
 17 employees. In addition to the \$101 million after tax
 18 adjustment booked in the second quarter, the company
 19 expects to incur additional transaction and shutdown-related
 20 costs of approximately \$50 million, after tax, most of which
 21 will be incurred in the third quarter.

22 ...

23 Washington Mutual’s Board of Directors declared a cash
 24 dividend of 52 cents per share on the company’s common
 25 stock, up from 51 cents per share in the previous quarter. ...

26 63. The press release also provided the following second quarter financial summary
 and Retail Banking Group results:

Second Quarter Financial Summary

Financial Summary	<u>Three Months Ended</u>		
	June 30, 2006	March 31, 2006	June 30, 2005
<i>(In millions)</i>			
Income Statement			
Net interest income	\$ 2,060	\$ 2,117	\$ 2,009
Provision for loan and lease losses	224	82	31
Noninterest income	1,578	1,638	1,106
Noninterest expense	2,229	2,138	1,767
Net income	767	985	844
Balance Sheet			
Average total assets	\$ 349,561	\$ 344,562	\$ 320,845
Average total deposits	200,252	191,034	183,521
Profitability Ratios			
Return on average common equity	11.39%	14.18%	15.33%
Net interest margin	2.65	2.75	2.77

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Efficiency ratio	61.27	56.95	56.70
Nonperforming assets/total assets	0.62	0.59	0.53
Tangible equity/total tangible assets	5.94	5.85	5.13

Retail Banking Group

Selected Segment Information <i>(In millions, except accounts and households)</i>	Three Months Ended		
	June 30, 2006	March 31, 2006	June 30, 2005
Net interest income	\$ 1,509	\$ 1,523	\$ 1,458
Provision for loan and leases losses	37	50	40
Noninterest income ¹	732	674	619
Noninterest expense ¹	1,138	1,107	1,042
Net income from continuing operations ¹	670	651	625
Average loans	\$ 195,985	\$ 189,142	\$ 181,396
Average retail deposits	138,803	139,062	135,539
Net change in retail checking accounts ²	404,190	340,157	244,028
Net change in retail households	259,000	210,000	173,000

64. On August 9, 2006, WaMu filed the Company's Form 10-Q for the quarter ended June 30, 2006 with the SEC, signed and certified by Defendants Killinger and Casey. This 10-Q contained substantially the same statements concerning the Company's operations provided in the July 19, 2006 press release. It also provided that "[t]he Company's financial reporting and accounting policies conform to accounting principles generally accepted in the United States of America ("GAAP")" and, with respect to sufficiency of "controls and procedures":

Disclosure Controls and Procedures

The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by this report. Based on such evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective in recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Securities Exchange Act of 1934.

In reaching the conclusion that disclosure controls and procedures were effective, management had considered the potential financial impact of control deficiencies associated

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1 with the matters giving rise to the restatement described in
2 Note 2 to the Consolidated Financial Statements on page 7.
3 Management believes this restatement is immaterial and was
4 not the result of a material weakness in the Company's
5 internal control over financial reporting. Accordingly,
6 management has not changed its conclusion described above
7 that the Company's disclosure controls and procedures were
8 designed and operating effectively as of June 30, 2006.

9 Management reviews and evaluates the design and
10 effectiveness of the Company's disclosure controls and
11 procedures on an ongoing basis, which may result in the
12 discovery of deficiencies, and improves its controls and
13 procedures over time, correcting any deficiencies that may
14 have been discovered.

15 Changes in Internal Control Over Financial Reporting

16 Management reviews and evaluates the design and
17 effectiveness of the Company's internal control over financial
18 reporting on an ongoing basis, which may result in the
19 discovery of deficiencies, some of which may be significant,
20 and changes its internal control over financial reporting as
21 needed to maintain their effectiveness, correcting any
22 deficiencies, as needed, in order to ensure the continued
23 effectiveness of the Company's internal controls. There have
24 not been any changes in the Company's internal control over
25 financial reporting during the second quarter of 2006 that
26 have materially affected, or are reasonably likely to materially
affect, the Company's internal control over financial
reporting.

65. On October 18, 2006, WaMu issued a press release announcing the Company's
results for the third quarter of 2006. In relevant part, the press release provided:

Washington Mutual, Inc. (NYSE: WM) today reported third
quarter 2006 net income of \$748 million, or \$0.77 per diluted
share compared with net income of \$821 million, or \$0.92 per
diluted share, in the third quarter of 2005.

Third quarter 2006 earnings included net after tax charges of
\$31 million, or \$0.03 per diluted share, related to the
previously announced sale of \$2.53 billion of mortgage
servicing rights, and after tax charges of \$33 million, or \$0.04
per diluted share, related to the company's ongoing efficiency
initiatives, which are expected to continue into the fourth
quarter.

"We continue to focus on the successful execution of our
strategic plan despite the challenging operating environment,"
said Kerry Killinger, WaMu Chairman and CEO, noting that,

1 as anticipated, the costs associated with the MSR sale
 2 announced in the second quarter and the company's ongoing
 3 efficiency initiatives impacted third quarter results. "Retail
 4 Banking, Card Services and the Commercial Group produced
 5 solid results, and we continue to aggressively attack our
 6 expense base by taking out excess capacity and reducing our
 7 overall cost structure."

8 Killinger added, "We remain confident in our strategy to
 9 reposition the company and set the stage for stronger
 10 performance in 2007."

11 WaMu's Board of Directors declared a cash dividend of 53
 12 cents per share on the company's common stock, up from 52
 13 cents per share in the previous quarter. ...

14 66. The press release also provided the following third quarter financial summary and

15 Retail Banking Group results:

16 Third Quarter Financial Summary

Financial Summary	Three Months Ended		
	September 30, 2006	June 30, 2006	September 30, 2005
<i>(In millions, except per share data)</i>			
Income Statement			
Net interest income	\$ 1,947	\$ 2,060	\$ 2,005
Provision for loan and lease losses	166	224	52
Noninterest income	1,570	1,578	1,208
Noninterest expense	2,184	2,229	1,860
Net income	748	767	821
Diluted earnings per common share	\$ 0.77	\$ 0.79	\$ 0.92
Balance Sheet			
Total assets, end of period	\$ 348,877	\$ 350,884	\$ 333,285
Average total assets	349,542	348,664	326,955
Average total deposits	208,912	200,252	188,320
Profitability Ratios			
Return on average common equity	11.47%	11.82%	14.88%
Net interest margin	2.53	2.65	2.73
Efficiency ratio	62.09	61.27	57.88
Nonperforming assets/total assets, end of period	0.69	0.62	0.52
Tangible equity/total tangible assets, end of period	5.86	5.84	4.99

1 Retail Banking Group

2 Selected Segment Information

3 (In millions, except accounts and households)

4

5

6

7

8

9

	Three Months Ended		
	September 30, 2006	June 30, 2006	September 30, 2005
Net interest income	\$ 1,444	\$ 1,509	\$ 1,417
Provision for loan and leases losses	58	37	47
Noninterest income	756	732	653
Noninterest expense	1,105	1,141	1,080
Net income from continuing operations	651	668	592
Average loans	\$ 192,445	\$ 195,994	\$ 179,361
Average retail deposits	139,954	138,803	138,741
Net change in retail checking accounts ¹	307,433	404,190	253,095
Net change in retail households	256,000	259,000	167,000

10 67. In his prepared remarks for the Company's third quarter 2006 conference call the
11 same day, Defendant Killinger stated the following:

12 *Despite the challenging environment impacting the mortgage*
13 *banking industry, we feel good about the proactive steps that*
14 *we have taken. Our portfolio remains in very good shape and*
15 *nonperforming assets remain very low. The housing market*
16 *is clearly weakening, with the pace of housing price*
17 *appreciation slowing in most regions of the country. We are*
18 *also experiencing somewhat higher delinquencies and loan*
19 *losses. However, we began preparing for this possibility*
20 *quite some time ago and took defensive actions to strengthen*
21 *our portfolio. So we believe we are well prepared to weather*
22 *the more difficult credit environment. We also believe that*
23 *the expansion in our net interest margin should more than*
24 *offset the higher credit card costs, as Tom will review with*
25 *you later in his guidance for 2007.*

20 In the meantime, we continued to aggressively attack the cost
21 structure in our Home Loans business during the quarter and
22 reduced noninterest expense by 21% over the same period a
23 year ago, and this was achieved through key productivity and
24 efficiency initiatives. Technology and off-shoring initiatives
25 currently underway are expected to result in further expense
26 reductions in future quarters.

24 We have significantly modified our Home Loans strategy to
25 be consistent with our overall business model and continue to
26 take appropriate actions to right-size the business for the
contracting mortgage lending market.

...

1 The quality of our Option ARM portfolio remains strong. *At*
2 *the end of the third quarter, the current estimated loan-to-*
3 *value ratio of our Option ARM portfolio was 57%, with an*
4 *average FICO of 707. (Emphasis added.)*

5 68. On November 9, 2006, WaMu filed the Company's Form 10-Q for the quarter
6 ended September 30, 2006 with the SEC, signed and certified by Defendants Killinger and
7 Casey. This 10-Q contained substantially the same statements concerning the Company's
8 operations provided in the October 18, 2006 press release. It also provided that "[t]he
9 Company's financial reporting and accounting policies conform to accounting principles
10 generally accepted in the United States of America ("GAAP")" and, with respect to sufficiency
11 of "controls and procedures":

12 Disclosure Controls and Procedures

13 The Company's management, with the participation of the
14 Company's Chief Executive Officer and Chief Financial
15 Officer, has evaluated the effectiveness of the Company's
16 disclosure controls and procedures as of the end of the period
17 covered by this report. Based on such evaluation, the
18 Company's Chief Executive Officer and Chief Financial
19 Officer have concluded that, as of the end of such period, the
20 Company's disclosure controls and procedures are effective
21 in recording, processing, summarizing and reporting, on a
22 timely basis, information required to be disclosed by the
23 Company in the reports that it files or submits under the
24 Securities Exchange Act of 1934.

25 Management reviews and evaluates the design and
26 effectiveness of the Company's disclosure controls and
27 procedures on an ongoing basis, which may result in the
28 discovery of deficiencies, and improves its controls and
29 procedures over time, correcting any deficiencies that may
30 have been discovered.

31 Changes in Internal Control Over Financial Reporting

32 Management reviews and evaluates the design and
33 effectiveness of the Company's internal control over financial
34 reporting on an ongoing basis, which may result in the
35 discovery of deficiencies, some of which may be significant,
36 and changes its internal control over financial reporting as
37 needed to maintain their effectiveness, correcting any
38 deficiencies, as needed, in order to ensure the continued

1 effectiveness of the Company's internal controls. There have
2 not been any changes in the Company's internal control over
3 financial reporting during the third quarter of 2006 that have
4 materially affected, or are reasonably likely to materially
5 affect, the Company's internal control over financial
6 reporting. ...

7 69. On January 17, 2007, WaMu issued a press release announcing the Company's
8 results for the fourth quarter of 2006 and fiscal year ended 2006. In relevant part, the press
9 release provided:

10 Washington Mutual, Inc. (NYSE: WM) today reported fourth
11 quarter 2006 net income of \$1.06 billion, or \$1.10 per diluted
12 share, compared with net income of \$865 million, or \$0.85
13 per diluted share, in the fourth quarter of 2005. Net income
14 for 2006 was \$3.56 billion, or \$3.64 per diluted share,
15 compared with net income of \$3.43 billion, or \$3.73 per
16 diluted share, in 2005.

17 ...

18 On Jan. 3, 2007, the company entered into an accelerated
19 share repurchase agreement with a dealer, buying back \$2.7
20 billion of its common stock. The company also increased its
21 cash dividend to 54 cents per common share, up from 53
22 cents per share in the previous quarter.

23 "We achieved solid performances in our Retail Banking, Card
24 Services and Commercial Group businesses in the fourth
25 quarter and for the full year despite a difficult interest rate and
26 operating environment, which particularly impacted the
results in our Home Loans business," said Kerry Killinger,
WaMu Chairman and CEO. "For the full year, we
successfully reduced our cost structure and repositioned the
balance sheet while continuing to expand our consumer and
small business banking franchise. In 2006, we opened a
record 1.23 million net new checking accounts, added a
record 848,000 net new retail households and experienced
strong cross-sales of the WaMu credit card to our retail
banking customers."

Killinger noted that opportunities to grow the balance sheet at
attractive risk-adjusted returns are limited, making the
accelerated share repurchase transaction a superior use of
capital.

"Our outlook for 2007 reflects the strategic actions we took in
2006 to prepare the company for the future," Killinger added.
"Those decisive actions have positioned us well to deliver
stronger operating performance in 2007."

70. The press release also provided the following fourth quarter and full year financial summary and Retail Banking Group results:

Fourth Quarter and Full Year Financial Summary

Financial Summary <i>(in millions, except per share data)</i>	<u>Three Months Ended</u>			<u>Year Ended</u>	
	Dec. 31, 2006	Sept. 30, 2006	Dec. 31, 2005	Dec. 31, 2006	Dec. 31, 2005
Income Statement					
Net interest income	\$ 1,998	\$ 1,947	\$ 2,241	\$ 8,121	\$ 8,218
Provision for loan and lease losses	344	166	217	816	316
Noninterest income	1,592	1,570	1,526	6,377	5,097
Noninterest expense	2,257	2,184	2,214	8,807	7,620
Income from discontinued operations, net of taxes	418	9	8	444	38
Net income	1,058	748	865	3,558	3,432
Diluted earnings per common share	\$ 1.10	\$ 0.77	\$ 0.85	\$ 3.64	\$ 3.73
Balance Sheet					
Total assets, end of period	\$ 346,288	\$ 348,877	\$ 343,573	\$ 346,288	\$ 343,573
Average total assets	353,056	349,542	349,172	348,758	326,233
Average interest-earning assets	314,784	312,827	314,490	312,178	294,829
Average total deposits	214,801	208,912	196,799	203,829	186,023
Profitability ratios					
Return on average common equity	16.03%	11.47%	12.85%	13.52%	14.91%
Net interest margin	2.58	2.53	2.88	2.60	2.79
Efficiency ratio	62.87	62.09	58.75	60.75	57.23
Nonperforming assets/total assets, end of period	0.80	0.69	0.57	0.80	0.57
Tangible equity/total tangible assets, end of period	6.04	5.86	5.62	6.04	5.62

Retail Banking Group

Selected Segment Information <i>(in millions, except accounts and households)</i>	<u>Three Months Ended</u>			<u>Year Ended</u>	
	Dec. 31, 2006	Sept. 30, 2006	Dec. 31, 2005	Dec. 31, 2006	Dec. 31, 2005
Net interest income	\$ 1,239	\$ 1,260	\$ 1,278	\$ 5,171	\$ 4,890

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Provision for loan and lease losses	47	53	26	167	118
Noninterest income	774	738	730	2,919	2,580
Noninterest expense	1,103	1,079	1,100	4,380	4,187
Net income from continuing operations	544	546	553	2,228	1,994
Average loans	\$ 172,031	\$ 180,839	\$ 166,810	\$ 177,473	\$ 163,561
Average retail deposits	143,513	139,954	140,212	140,344	136,894
Net change in number of retail checking accounts	179,784	307,433	203,190	1,231,564	902,447
Net change in retail households	123,000	256,000	143,000	848,000	633,000

71. On March 1, 2007, WaMu filed the Company's Form 10-K for the fourth quarter and year ended December 31, 2006 with the SEC, signed by Director Defendants and Defendant Casey, and certified by Defendants Killinger and Casey. The 2006 10-K contained substantially the same statements concerning the Company's operations provided in the January 17, 2007 press release. It also provided that the Company's "financial reporting and accounting policies conform to accounting principles generally accepted in the United States of America ("GAAP"), which includes certain practices of the banking industry" and, with respect to sufficiency of "controls and procedures":

Disclosure Controls and Procedures

The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by this report. Based on such evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective in recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or furnishes under the Securities Exchange Act of 1934.

Management reviews and evaluates the design and effectiveness of the Company's disclosure controls and procedures on an ongoing basis, which may result in the discovery of deficiencies, and improves its controls and

1 procedures over time, correcting any deficiencies, as needed,
2 that may have been discovered.

3 Changes in Internal Control Over Financial Reporting

4 Management reviews and evaluates the design and
5 effectiveness of the Company's internal control over financial
6 reporting on an ongoing basis, which may result in the
7 discovery of deficiencies, some of which may be significant,
8 and changes its internal control over financial reporting as
9 needed to maintain its effectiveness, correcting any
10 deficiencies, as needed, in order to ensure the continued
11 effectiveness of the Company's internal control over financial
12 reporting. There have not been any changes in the
13 Company's internal control over financial reporting during
14 the fourth quarter of 2006 that have materially affected, or are
15 reasonably likely to materially affect, the Company's internal
16 control over financial reporting.

17 72. The 10-K also sets forth the following in connection with respect to the
18 Company's "critical accounting estimates":

19 Fair Value of Certain Financial Instruments and Other Assets

20 A portion of the Company's assets are carried at fair value,
21 including: mortgage servicing rights, certain retained interests
22 from securitization activities (which are classified as trading
23 assets), available-for-sale securities and derivatives. In
24 addition, loans held for sale are recorded at the lower of
25 carrying value or fair value. Changes in fair value of those
26 instruments that qualify as hedged items under fair value
27 hedge accounting are recognized in earnings and offset the
28 changes in fair value of derivatives used as hedge accounting
29 instruments.

30 Fair value is defined as the price that would be received to
31 sell an asset or paid to transfer a liability in an orderly
32 transaction between market participants at the measurement
33 date. Generally, for assets that are reported at fair value, the
34 Company uses quoted market prices or internal valuation
35 models that utilize market data inputs where readily available
36 and other assumptions, such as loan prepayment speeds,
37 forward interest rate yield curves, market volatilities and
38 pricing spreads to determine their fair values. The degree of
39 management judgment involved in determining the fair value
40 of a financial instrument or other asset is dependent upon the
41 availability of quoted market prices or observable market
42 value inputs. For financial instruments that are actively
43 traded in the marketplace or whose values are based on
44 readily available market value data, little, if any, subjectivity
45 is applied when determining the instrument's fair value.

1 When observable market prices and data are not readily
2 available, significant management judgment often is
3 necessary to estimate fair value. In those cases, different
4 assumptions could result in significant changes in valuation.

5 The following financial instruments and other assets require
6 the Company's most complex judgments and assumptions
7 when estimating fair value:

8 Mortgage Servicing Rights and Certain Other Retained
9 Interests in Securitizations

10 MSR and certain other retained interests from securitization
11 activities do not trade in an active, open market with readily
12 quoted prices. Although sales do occur from time to time, the
13 terms of such sales are generally not readily available.
14 Consequently, the Company estimates the fair value of MSR
15 and certain other retained interests in securitization activities
16 utilizing internal discounted cash flow models.

17 The discounted cash flow model for MSR calculates the
18 present value of the expected future net cash flows of the
19 servicing portfolio based on various assumptions, such as
20 estimated future servicing costs, expected servicing portfolio
21 prepayment speeds and discount rates that are commensurate
22 with the risk profile of the serviced assets. This model is
23 highly sensitive to changes in certain assumptions. Different
24 expected prepayment speeds, in particular, can result in
25 substantial changes in the estimated fair value of MSR. If
26 actual prepayment experience differs materially from the
27 expected prepayment speeds used in the Company's model,
28 this difference would likely result in a material change in
29 MSR fair value. While the Company's model estimates a
30 value, the specific value used is based on a variety of market-
31 based factors, such as documented observable data and
32 expected changes in prepayment speeds. The reasonableness
33 of management's assumptions about these factors is evaluated
34 through quarterly independent broker surveys. *Independent*
35 *appraisals of the fair value of the mortgage servicing rights*
36 *are obtained at least quarterly, and are used by management*
37 *to evaluate the reasonableness of the fair value conclusions.*
38 ... (Emphasis added.)

39 73. Concerning "allowance for loan and lease losses and contingent credit risk
40 liabilities," the 10-K sets forth:

41 The allowance for loan and lease losses represents
42 management's estimate of incurred credit losses inherent in
43 the Company's loan and lease portfolios as of the balance
44 sheet date. *The estimation of the allowance is based on a*
45 *variety of factors, including past loan loss experience, the*

1 *current credit profile of the Company's borrowers, adverse*
2 *situations that have occurred that may affect the borrowers'*
3 *ability to repay, the estimated value of underlying collateral,*
4 *the interest rate climate as it affects adjustable-rate loans and*
5 *general economic conditions. Loans held in portfolio that are*
6 *evaluated for collective impairment and loans held in*
7 *portfolio that are individually reviewed for impairment but*
8 *deemed not to be impaired may have both an allocated and*
9 *unallocated allowance. Loans that are individually deemed*
10 *to be impaired may only have an allocated allowance.*

11 *The allowance for loans evaluated for collective impairment*
12 *is comprised of an allocated allowance that is computed for*
13 *each portfolio based on specific loan portfolio metrics and an*
14 *unallocated allowance that is computed based on certain*
15 *environmental factors we believe are not adequately captured*
16 *in the allocated allowance computations. Determining the*
17 *adequacy of the allowance, particularly the unallocated*
18 *allowance, is complex and requires judgment by management*
19 *about the effect of matters that are inherently uncertain.*
20 *Subsequent evaluations of the loan portfolio, in light of the*
21 *factors then prevailing, may result in significant changes in*
22 *the allowance for loan and lease losses in future periods.*

23 *The allowance is comprised of an allowance for individually*
24 *impaired loans, as well as an allowance for other individually*
25 *unimpaired loans that share common risk characteristics that,*
26 *in the aggregate, have incurred a probable loss on a collective*
basis. The determination of common risk factors that indicate
a probable loss on a collective basis is complex and requires
significant judgment by management about the shared risk
characteristics that suggest a probable loss.

The allowance for loan and lease losses is reported within the Consolidated Statements of Financial Condition and the provision for loan and lease losses is reported within the Consolidated Statements of Income. (Emphasis added.)

74. On April 17, 2007, WaMu issued a press release announcing the Company's results for the first quarter of 2007. In relevant part, the press release provided:

Washington Mutual, Inc. (NYSE: WM) reported first quarter 2007 net income of \$784 million, or \$0.86 per diluted share, compared with net income of \$985 million, or \$0.98 per diluted share, in the first quarter of 2006,

Based on these earnings and the company's strong financial position, the Board of Directors increased the cash dividend on the company's common stock for the 47th consecutive quarter to 55 cents per share.

1 “Our Retail Banking, Card Services, and Commercial groups
 2 continued to post strong results in the first quarter as we
 3 successfully attracted a growing number of new customers to
 4 our expanding national banking franchise,” said Kerry
 5 Killinger, the company’s chairman and CEO. “Overall, we
 6 delivered solid results in the first quarter despite the
 7 challenging interest rate environment and slowing housing
 8 market.”

9 “Our Home Loans business was challenged during the first
 10 quarter by difficult market conditions,” he added. “*Over the
 11 past 12 months, we have taken a number of prudent actions to
 12 reduce our exposure to the subprime mortgage industry.
 13 These actions, along with a diversified business mix, limited
 14 our exposure to the mortgage market’s downturn and position
 15 us well to expand and grow as market conditions improve.*”
 16 (Emphasis added.)

17 75. The press release also provided the following first quarter financial summary and
 18 Retail Banking Group results:

19 First Quarter Financial Summary and Highlights

20 **Financial Summary**

	Three Months Ended		
<i>(in millions, except per share data)</i>	Mar. 31, 2007	Dec. 31, 2006	Mar. 31, 2006
Income Statement			
Net interest income	\$ 2,081	\$ 1,998	\$ 2,117
Provision for loan and lease losses	234	344	82
Noninterest income	1,541	1,592	1,638
Noninterest expense	2,105	2,257	2,138
Income from continuing operations	784	640	976
Income from discontinued operations, net of taxes	-	418	9
Net income	784	1,058	985
Diluted earnings per common share	\$ 0.86	\$ 1.10	\$ 0.98

21 **Balance Sheet**

Total assets, end of period	\$ 319,985	\$ 346,288	\$ 348,401
Average total assets	331,905	353,056	343,660
Average interest-earning assets	295,700	314,784	307,777
Average total deposits	210,764	214,801	191,034

22 **Performance Ratios**

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Return on average common equity	12.99%	16.03%	14.69%
Net interest margin	2.79	2.58	2.75
Efficiency ratio	58.13	62.87	56.95
Nonperforming assets/total assets	1.02	0.80	0.59
Tangible equity/total tangible assets	5.78	6.04	5.75

Retail Banking Group

Selected Segment Information

<i>(in millions, except accounts and households)</i>	Three Months Ended		
	Mar. 31, 2007	Dec. 31, 2006	Mar. 31, 2006
Net interest income	\$ 1,275	\$ 1,239	\$ 1,347
Provision for loan and lease losses	62	47	54
Noninterest income	751	774	670
Noninterest expense	1,075	1,102	1,088
Net income from continuing operations	569	545	548
Average loans	\$ 155,206	\$ 172,029	\$ 173,852
Average retail deposits	144,030	143,513	139,060
Net change in number of retail checking accounts	327,776	179,784	340,157
Net change in retail households	195,000	123,000	210,000

76. On May 10, 2007, WaMu filed the Company's Form 10-Q for the quarter ended March 31, 2007 with the SEC, signed and certified by Defendants Killinger and Casey. The 10-Q contained substantially the same statements concerning the Company's operations provided in the April 17, 2007 press release. It also provided that "[t]he Company's financial reporting and accounting policies conform to accounting principles generally accepted in the United States of America ("GAAP")" and, with respect to sufficiency of "controls and procedures":

Disclosure Controls and Procedures

The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by this report. Based on such evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective

1 in recording, processing, summarizing and reporting, on a
2 timely basis, information required to be disclosed by the
3 Company in the reports that it files or furnishes under the
4 Securities Exchange Act of 1934.

5 Management reviews and evaluates the design and
6 effectiveness of the Company's disclosure controls and
7 procedures on an ongoing basis, which may result in the
8 discovery of deficiencies, and improves its controls and
9 procedures over time, correcting any deficiencies, as needed,
10 that may have been discovered.

11 Changes in Internal Control Over Financial Reporting

12 Management reviews and evaluates the design and
13 effectiveness of the Company's internal control over financial
14 reporting on an ongoing basis, which may result in the
15 discovery of deficiencies, some of which may be significant.
16 Management changes its internal control over financial
17 reporting as needed to maintain its effectiveness, correcting
18 any deficiencies, as needed, in order to ensure the continued
19 effectiveness of the Company's internal control over financial
20 reporting. There have not been any changes in the
21 Company's internal control over financial reporting during
22 the first quarter of 2007 that have materially affected, or are
23 reasonably likely to materially affect, the Company's internal
24 control over financial reporting. ...

25 77. On July 18, 2007, WaMu issued a press release announcing the Company's
26 results for the second quarter of 2007. In relevant part, the press release provided:

27 WaMu announced today that second quarter 2007 earnings
28 per share increased 16 percent from a year ago. Continued
29 strong performance led to net income of \$830 million, or
30 \$0.92 per diluted share, compared with net income of \$767
31 million, or \$0.79 per diluted share, in the second quarter of
32 2006. Second quarter net income was also up from \$784
33 million, or \$0.86 per share, in the prior quarter.

34 "We delivered record growth in our retail banking, credit
35 card and commercial businesses during the second quarter.
36 *Our Home Loans' results improved from the first quarter and
37 we are targeting a return to profitability by the end of the
38 year,*" said Chairman and CEO Kerry Killinger. "I'm pleased
39 with the job our employees are doing in growing the
40 franchise, delivering best-in-class customer service, as
41 evidenced by our recent J.D. Power award recognition, and
42 focusing on improving our operating efficiency."

43 Based on the quarter's solid performance and the company's
44 strong financial position, the Board of Directors increased the

1 cash dividend on the company's common stock for the 48th
 2 consecutive quarter to 56 cents per share. (Emphasis added.)

3 78. The press release also provided the following second quarter financial summary
 4 and Retail Banking Group results:

5 Second Quarter Financial Summary and Highlights

6 **Financial Summary**

	Three Months Ended		
	June 30, 2007	Mar. 31, 2007	June 30, 2006
<i>(in millions, except per share data)</i>			
Income Statement			
Net interest income	\$ 2,034	\$ 2,081	\$ 2,060
Provision for loan and lease losses	372	234	224
Noninterest income	1,758	1,541	1,578
Noninterest expense	2,138	2,105	2,229
Income from continuing operations	830	784	759
Income from discontinued operations, net of taxes	-	-	8
Net income	830	784	767
Diluted earnings per common share	\$ 0.92	\$ 0.86	\$ 0.79

14 **Balance Sheet**

Total assets, end of period	\$ 312,219	\$ 319,985	\$ 350,884
Average total assets	316,004	331,905	348,664
Average interest-earning assets	279,836	295,700	313,239
Average total deposits	206,765	210,764	200,252

17 **Performance Ratios**

Return on average common equity	13.74%	12.99%	11.82%
Net interest margin	2.90	2.79	2.65
Efficiency ratio	56.38	58.13	61.27
Nonperforming assets/total assets	1.29	1.02	0.62
Tangible equity/total tangible assets	6.07	5.78	5.84

21 **Retail Banking Group**

22 **Selected Segment Information**

	Three Months Ended		
	June 30, 2007	Mar. 31, 2007	June 30, 2006
<i>(in millions, except accounts and households)</i>			
Net interest income	\$ 1,283	\$ 1,275	\$ 1,323
Provision for loan and lease losses	91	62	13
Noninterest income	819	751	732
Noninterest expense	1,139	1,075	1,109
Net income from continuing operations	558	569	586

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Average loans	\$ 149,716	\$ 155,206	\$ 182,891
Average retail deposits	145,252	144,030	138,803
Net change in number of retail checking accounts	406,243	327,776	404,190
Net change in retail households	228,000	195,000	259,000

79. On August 9, 2007, WaMu filed the Company's Form 10-Q for the quarter ended June 30, 2007 with the SEC, signed and certified by Defendants Killinger and Casey. The 10-Q contained substantially the same statements concerning the Company's operations provided in the July 18, 2007 press release. It also provided that "[t]he Company's financial reporting and accounting policies conform to accounting principles generally accepted in the United States of America ("GAAP")" and, with respect to sufficiency of "controls and procedures":

Disclosure Controls and Procedures

The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by this report. Based on such evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective in recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or furnishes under the Securities Exchange Act of 1934.

Management reviews and evaluates the design and effectiveness of the Company's disclosure controls and procedures on an ongoing basis, which may result in the discovery of deficiencies, and improves its controls and procedures over time, correcting any deficiencies, as needed, that may have been discovered.

Changes in Internal Control Over Financial Reporting

Management reviews and evaluates the design and effectiveness of the Company's internal control over financial reporting on an ongoing basis, which may result in the discovery of deficiencies, some of which may be significant. Management changes its internal control over financial reporting as needed to maintain its effectiveness, correcting any deficiencies, as needed, in order to ensure the continued

1 effectiveness of the Company's internal control over financial
2 reporting. There have not been any changes in the
3 Company's internal control over financial reporting during
4 the second quarter of 2007 that have materially affected, or
5 are reasonably likely to materially affect, the Company's
6 internal control over financial reporting.

7 80. On October 5, 2007, WaMu issued a press release titled *Washington Mutual Q3*
8 *Net Income Impacted by Market and Credit Environments*. In relevant part, the press release
9 provided:

10 Washington Mutual, Inc. (WM: NYSE) announced today that
11 a weakening housing market and disruptions in the secondary
12 market through the end of the third quarter will result in a
13 decline in net income of approximately 75% from the prior
14 year quarter, subject to the finalization of third-quarter 2007
15 results.

16 The expected decline in third quarter net income results
17 principally from the following items that are reported on a
18 pre-tax basis:

- 19 • The third-quarter loan loss provision will
20 be approximately \$975 million, which exceeds
21 net charge-offs for the quarter by approximately
22 \$550 million. The provision reflects ongoing
23 weakness in the housing market, primarily as it
24 affects subprime and home equity loans, as well
25 as growth in the company's loan portfolio;
- 26 • Downward adjustments of approximately
\$150 million, related to approximately \$17
billion in held-for-sale mortgage loans that were
transferred to the company's investment
portfolio due to secondary market conditions;
- Net losses of approximately \$150 million
in the company's trading securities portfolio,
including market valuation adjustments on
capital markets assets, retained interests on
credit cards and other residual interests; and,
- Impairment losses of approximately \$110
million on investment grade mortgage-backed
securities in the company's available for sale
portfolio.

WaMu Chairman and CEO Kerry Killinger said, "While
we're disappointed with our anticipated third-quarter results,
we look forward to an improved fourth quarter as we continue

1 to see good operating performance in our Retail Banking,
2 Card Services and Commercial Group businesses.”

3 Killinger added that the company continues to have the
4 liquidity and capital necessary to grow the company’s
5 businesses and support its current dividend, as it continues to
6 execute its long-term strategic plans.

7 Washington Mutual is providing preliminary information
8 about its third quarter results prior to its scheduled earnings
9 announcement date in light of the impact of the very
10 challenging market environment. No further details will be
11 provided concerning the company’s third quarter performance
12 until its regularly scheduled earnings release on Oct. 17,
13 2007. In the conference call following its earnings release on
14 Oct. 17, the company will update its 2007 earnings drivers,
15 including its updated expectations for loan loss provisioning
16 levels in the fourth quarter of 2007.

17 81. On October 17, 2007, WaMu issued a press release announcing the Company’s
18 results for the third quarter of 2007. In relevant part, the press release provided:

19 WaMu (NYSE: WM) announced today third quarter 2007 net
20 income of \$210 million, or \$0.23 per diluted share, compared
21 with net income of \$748 million, or \$0.77 per diluted share,
22 in the third quarter of 2006. The company attributed the
23 decline to a weaker housing market and disruptions in the
24 capital markets.

25 *“We’re disappointed with our third quarter results but they
26 reflect the increasingly difficult market conditions that are
challenging the banking industry,”* said WaMu Chairman and
Chief Executive Officer Kerry Killinger. *“Despite these
challenges, our Retail Banking, Card Services and
Commercial businesses delivered good operating
performance during the quarter, and we continued to adapt
our Home Loans business to meet market conditions.”*
Killinger added that the company remains focused on
executing its long-term growth plans.

The company also announced its Board of Directors declared
a quarterly cash dividend on the company’s common stock of
56 cents per share. (Emphasis added.)

82. The press release also provided the following third quarter financial summary and
Retail Banking Group results:

Third Quarter Financial Summary and Highlights

Selected Financial Information

<i>(in millions, except per share data)</i>	Three Months Ended		
	September 30, 2007	June 30, 2007	September 30, 2006
Income Statement			
Net interest income	\$ 2,014	\$ 2,034	\$ 1,947
Provision for loan and lease losses	967	372	166
Noninterest income	1,379	1,758	1,570
Noninterest expense	2,153	2,138	2,184
Net income	210	830	748
Diluted earnings per common share	\$ 0.23	\$ 0.92	\$ 0.77
Balance Sheet			
Total assets, end of period	\$ 330,110	\$ 312,219	\$ 348,877
Average total assets	320,475	316,004	349,542
Average interest-earning assets	283,263	279,836	312,827
Average total deposits	198,649	206,765	208,912
Performance Ratios			
Return on average common equity	3.45%	13.74%	11.47%
Net interest margin	2.86	2.90	2.53
Efficiency ratio	63.42	56.38	62.09
Nonperforming assets/total assets	1.65	1.29	0.69
Tangible equity/total tangible assets	5.61	6.07	5.86

Retail Banking Group

Selected Segment Information

<i>(in millions, except accounts and households)</i>	Three Months Ended		
	September 30, 2007	June 30, 2007	September 30, 2006
Net interest income	\$ 1,302	\$ 1,283	\$ 1,260
Provision for loan and lease losses	318	91	53
Noninterest income	833	819	738
Noninterest expense	1,155	1,137	1,079
Net income	453	559	555
Average loans	\$ 147,357	\$ 149,716	\$ 180,829
Average retail deposits	144,921	145,252	139,954
Net change in number of retail checking accounts	310,360	406,243	307,433
Net change in retail households	161,000	228,000	256,000

1 83. In his prepared remarks for the Company's third quarter 2007 conference call the
2 same day, Defendant Casey stated the following with respect to credit provisioning:

3 As we consider our credit provisioning outlook for the
4 remainder of the year, let me just say that I have never seen
5 housing credit conditions change so significantly over such a
6 short period of time. Nor can I remember a period when there
7 was less clarity about near-term housing and credit trends.

8 As I discussed in detail earlier, we have seen a sharp
9 deterioration in the housing market since our second quarter
10 earnings call and a further acceleration of adverse trends in
11 our portfolio since we updated our guidance last in
12 September. The guidance I provide you today is based on our
13 best thinking given the facts that are currently available.
14 However, we expect the market will continue to change
15 quickly.

16 The main drivers of our credit provision are the level of
17 delinquencies and charge-offs in our portfolio, both of which
18 rose sharply in the third quarter as home prices declined in
19 many of our major markets. Based on our current view of the
20 macro environment for housing and our own portfolio data,
21 we expect delinquencies and charge-offs in our portfolio to
22 increase further during the fourth quarter.

23 Considering the weakening housing market and adverse
24 trends in the third quarter, *our best estimate at this time is that*
25 *charge-offs in our portfolio will increase between 20 and 40*
26 *percent in the fourth quarter and that our total 2007*
provision will be between \$2.7 and \$2.9 billion. (Emphasis
added.)

1 84. On October 18, 2007, a Reuters article titled *WaMu Falls on Losses, Dividend*
2 *Worry*, reported, in relevant part, as follows:

3 *Washington Mutual Inc (WM.N) shares fell as much as 9.3 percent*
4 *on Thursday after the largest U.S. savings and loan nearly doubled*
5 *its estimate for 2007 loan losses, leading analysts to downgrade the*
6 *stock and warn of a dividend cut.*

7 The Seattle-based thrift on Wednesday said third-quarter profit fell
8 72 percent to \$210 million, or 23 cents per share, hurt by a \$348
9 million loss in its mortgage unit. *It expects to set aside \$2.7 billion*
10 *to \$2.9 billion for bad loans for 2007, up from the \$1.5 billion to*
11 *\$1.7 billion it forecast in July.*

12 ...

1 In afternoon trading, Washington Mutual shares fell \$2.55, or
2 7.7 percent, to \$30.52 on the New York Stock Exchange,
after earlier falling to \$30.00. They began the year at \$45.40.

3 85. On October 31, 2007, Jonathan Weil authored a Bloomberg commentary titled
4 *Washington Mutual Shows Mortgage Mess Isn't Over*, which set forth as follows:

5 If you think the worst is over for mortgage lenders, a close look at
6 Washington Mutual Inc.'s balance sheet should dispel that notion
pretty quickly.

7 The largest U.S. savings and loan stunned investors on Oct. 17
8 when it said it would set aside as much as \$1.3 billion this quarter
to cover anticipated loan losses. The news came the same day
9 Washington Mutual announced a 72 percent drop in third-quarter
10 net income to \$210 million.

11 Since then, Washington Mutual's stock has fallen 15 percent. And
at \$28.11, the Seattle-based thrift now trades for only slightly more
12 than its book value, or assets minus liabilities, while its dividend
yield is a whopping 8 percent.

13 The signal from the market: Washington Mutual's dividend and
book value aren't sustainable -- and with good reason.
14 Washington Mutual has paid more than \$1.9 billion in cash
dividends over the past year, including \$485 million last quarter.
15 Meanwhile, the real wonder is that Washington Mutual's forecast
for fourth-quarter loan-loss provisions wasn't substantially higher.
16

17 First, a brief accounting primer: Loan-loss allowances are the
reserves that lenders set up on their balance sheets in anticipation
18 of bad loans. Provisions are the expenses lenders record to boost
their loan-loss allowances. As loans are written off, lenders record
19 charge-offs, reducing their allowances.

20 For the third quarter, Washington Mutual recorded \$967 million in
loan-loss provisions and \$421 million in net charge-offs. Those
21 and other actions brought the company's loan-loss allowance to
\$1.89 billion at Sept. 30, up from \$1.56 billion at June 30.
22

23 Looks Light

24 As for the fourth quarter, Washington Mutual predicted that
provisions would be \$1.1 billion to \$1.3 billion and that charge-
25 offs would increase 20 percent to 40 percent.

26 To see why even \$1.3 billion in provisions looks light, consider
Washington Mutual's \$57.86 billion of so-called option-ARM

1 loans, which make up 24 percent of Washington Mutual's loan
2 portfolio. These adjustable-rate mortgages were popular during
3 the housing bubble, because they give customers the option of
4 postponing interest payments, which the lender then adds to their
5 principal balances.

6 As of Sept. 30, the unpaid principal balance on Washington
7 Mutual's option ARMs exceeded the loans' original principal
8 amount by \$1.5 billion, meaning the customers owed \$1.5 billion
9 more in principal than what they originally borrowed. By
10 comparison, that figure was \$681 million a year earlier, when
11 Washington Mutual had \$67.14 billion, or 16 percent more, option
12 ARMs on its books.

13 Look to the end of 2005, and the trend becomes even starker.
14 Back then, Washington Mutual had even more option ARMs on its
15 balance sheet, at \$71.2 billion. Yet the unpaid principal balance
16 exceeded the original principal amount by only \$160 million -- and
17 that was up from a mere \$11 million at the end of 2004.

18 Deferring Pain

19 The deferred interest from option ARMs also boosts Washington
20 Mutual's earnings, part of a process known as negative
21 amortization, or "neg-am." That's because option-ARM lenders
22 recognize interest income when customers postpone their interest
23 payments, even though the lenders got no cash.

24 For the nine months ended Sept. 30, Washington Mutual
25 recognized \$1.05 billion in earnings as a result of neg-am within its
26 option-ARM portfolio. That represented 7.2 percent of
Washington Mutual's \$14.61 billion of total interest income year-
to-date. By comparison, neg-am contributed 1.8 percent of
Washington Mutual's interest income for all of 2005 and just 0.2
percent for 2004.

What's going on here? Either the borrowers postponing their
interest payments are doing so as a matter of choice, by and large,
or they can't afford to pay them. Common sense suggests it's the
latter -- and that there's serious doubt Washington Mutual ever will
collect the \$1.5 billion of postponed interest that its option-ARM
customers have added to their original principal balances.

27 No Questions

28 Yet the \$1.1 billion to \$1.3 billion of fourth-quarter provisions that
29 Washington Mutual predicted -- for the company as a whole --

1 wouldn't even cover the \$1.5 billion of tacked-on principal. The
2 trend among Washington Mutual's option ARMs shows no sign of
slowing, either.

3 Through a spokeswoman, Libby Hutchinson, Washington Mutual
4 officials declined to comment. She said the company's executives
aren't fielding questions until their next meeting with investors on
5 Nov. 7.

6 Then there's the bigger picture. While Washington Mutual's loan-
loss allowance rose 22 percent to \$1.89 billion during the 12
7 months ended Sept. 30, nonperforming assets rose 128 percent to
\$5.45 billion. So even if Washington Mutual adds \$1.3 billion in
8 provisions next quarter, its loan-loss allowance still won't be
anywhere close to catching up.

9 To be sure, Washington Mutual executives have some latitude over
10 the timing of the company's loan-loss provisions. Yet they also
may have a monetary incentive to push losses into 2008.

11 Under the formula Washington Mutual's compensation committee
12 will use to determine executive bonuses this year, 40 percent is
weighted toward 2007 earnings-per-share targets, according to the
13 company's latest proxy. Goals related to non-interest expense and
non-interest income each count for 25 percent, while "customer
14 loyalty" goals count for 10 percent.

15 Postponed Reckoning

16 The proxy didn't disclose the specific goals for those performance
17 measures. Still, it stands to reason that Washington Mutual
executives would come closer to hitting the EPS goal if they
18 minimize loan losses this year.

19 On its Web site, Washington Mutual says the reason it no longer
provides EPS forecasts to the public is that "many believe EPS
20 guidance tends to focus management on near-term rather than
long-term performance."

21 The same, of course, is true for executive bonuses that are tied
22 heavily to yearly EPS targets. If Washington Mutual's
management is more focused on near-term performance now, as
23 the numbers suggest, this might help explain it.

24 86. On November 1, 2007, News York's Attorney General issued a press release
25 announcing a lawsuit against one of the nation's largest real estate appraisal management
26

1 companies and its parent corporation for colluding with WaMu to inflate the appraisal values of
2 homes.

3 NEW YORK, NY (November 1, 2007) – Attorney General
4 Andrew M. Cuomo today announced that he is suing one of
5 the nation’s largest real estate appraisal management
6 companies and its parent corporation for colluding with the
7 largest savings and loan in the country to inflate the appraisal
8 values of homes.

9 In a scheme detailed in numerous e-mails, eAppraiseIT
10 (“EA”), a subsidiary of First American Corporation (NYSE:
11 FAF), caved to pressure from Washington Mutual (“WaMu”)
12 (NYSE: WM) to use a list of preferred “Proven Appraisers”
13 who provided inflated appraisals on homes. *The e-mails also*
14 *show that executives at EA knew their behavior was illegal,*
15 *but intentionally broke the law to secure future business with*
16 *WaMu.*

17 “The independence of the appraiser is essential to maintaining
18 the integrity of the mortgage industry. First American and
19 eAppraiseIT violated that independence when *Washington*
20 *Mutual strong-armed them into a system designed to rip off*
21 *homeowners and investors alike,”* said Attorney General
22 Cuomo. “The blatant actions of First American and
23 eAppraiseIT have contributed to the growing foreclosure
24 crisis and turmoil in the housing market. *By allowing*
25 *Washington Mutual to hand-pick appraisers who inflated*
26 *values, First American helped set the current mortgage crisis*
in motion.”

As First American acknowledged in its 2006 annual report,
appraisal fraud can damage the entire housing market,
including consumers and investors alike. Consumers are
harmled because they are misled as to the value of their
homes, increasing the risk of foreclosure and hindering their
ability to make sound economic decisions. Investors are hurt
by such fraud because it skews the value and risk of loans that
are sold in financial markets.

In April 2006, EA began providing appraisal services for
WaMu, which became EA’s biggest client. Within weeks,
WaMu began complaining to EA that its appraisals were not
high enough. WaMu pressured EA to employ exclusively a
new panel of appraisers that WaMu handselected as “Proven
Appraisers.” This set of appraisers was chosen by WaMu
specifically because they inflated property appraisals. WaMu
profited from these higher appraisals because they could
close more home loans, at greater values. Over the course of
their relationship, between April 2006 and October 2007, EA
provided approximately 262,000 appraisals for WaMu.

1 Attorney General Cuomo's investigation uncovered a series
2 of e-mails between executives at EA, First American, and
3 WaMu that show EA officials were willingly violating state
and federal appraisal independence regulations to comply
with WaMu's demands:

4 • On February 22, 2007, in response to a
5 description of the WaMu "Proven Appraiser"
6 program as one in which "we will now assign
7 all Wamu's work to Wamu's 'Proven
8 Appraisers'... [and] Performance ratings to
9 retain position as a Wamu Proven Appraiser
10 will be based on how many come in on value,"
11 eAppraiseIT's president told senior executives
12 at First American: "*we have agreed to roll over
13 and just do it...*"

14 • On April 4, 2007, eAppraiseIT's
15 executive vice president stated in an e-mail to
16 First American: "we as an AMC [Appraisal
17 Management Company] need to retain our
18 independence from the lender or it will look like
19 collusion... eAppraiseIT is clearly being
20 directed who to select. The reasoning... is
21 bogus for many reasons including the most
22 obvious – the proven appraisers bring in the
23 values."

24 • On April 17, 2007, eAppraiseIT's
25 president wrote an e-mail to First American
26 explaining why its conduct was illegal: "We
view this as a violation of the OCC, OTS, FDIC
and USPAP influencing regulation."

• E-mail evidence also shows that WaMu
pressured EA to inflate appraisals as a condition
for doing future business together:

• On September 27, 2006, First
American's vice chairman reported that a
WaMu executive told him: "if the appraisal
issues are resolved and things are working well
he would welcome conversations about
expanding our relationship..."

Attorney General Cuomo continued, "Just as my office
stepped in when colleges and loan companies were profiting
at students' expense, this lawsuit and my ongoing
investigation into the mortgage industry should send a clear
message: companies must play by the rules or they will have
to account for their misdeeds."

Attorney General Cuomo's lawsuit seeks to end the illegal
relationship between First American and EA and WaMu. It
also seeks penalties and disgorgement from First American

1 and EA. The lawsuit alleges that First American and EA
2 violated appraiser independence laws, which regulate the
3 conduct of real estate appraisers. The lawsuit was filed in the
Supreme Court of New York, New York County. (Emphasis
added and in original.)

4 87. On November 2, 2007, a MarketWatch article titled *WaMu Vulnerable on*
5 *Securitized Mortgages?*, discussed some of the potential ramification to the Company if the New
6 York Attorney General is success in the lawsuit. The article provides, in relevant part, the
7 following:

8 SAN FRANCISCO (MarketWatch) -- *Washington Mutual*
9 *may have to set aside some \$412 million to \$2.1 billion in*
10 *extra reserves if a lawsuit filed by New York state's attorney*
11 *general against the mortgage lender succeeds, a Keefe*
Bruyette & Woods analyst estimated on Friday.

12 ...

13 If Cuomo succeeds in proving eAppraiseIT's appraisals on
14 WaMu home loans were fraudulent, that could create big
15 problems for the Seattle-based lender, KBW's Frederick
16 Cannon wrote in a note to clients.

17 After lenders like WaMu originate home loans, they are often
18 packaged up into mortgage-backed securities and sold to
19 institutional investors around the world. The process gets the
20 loans off the lenders' books, freeing them from the risk that
those loans may default and also providing fresh cash to make
more new mortgages.

21 But if parts of the origination process are found to be
22 fraudulent, investors can potentially force lenders to buy the
23 mortgages back at the original price. If the assets have
24 suffered delinquencies and have dropped in value, the lender
25 takes a financial hit.

26 ...

27 The lawsuit filed by Cuomo "*raises an issue of considerable*
28 *risk to Washington Mutual: that poorly performing*
29 *securitized loans will be put back to WaMu from bondholders*
30 *on the basis of fraudulent appraisals and WaMu would be*
31 *forced to put bad loans back on its balance sheet,"* Cannon
32 said.

33 "In such a scenario, WaMu would have to buy the loans back
34 at par and then mark them to market on its balance sheet."

1 Cannon also questioned WaMu's assertion that it has no
2 incentive to inflate the appraised value of homes that it lends
3 against.

4 For mortgages that the company originates and then keeps on
5 its balance sheet, the assertion is valid. But for home loans
6 that WaMu sells as mortgage-backed securities, such an
7 argument can be dubious, he said.

8 "For loans that a bank plans to sell, high appraisals support a
9 greater amount of loans that can be sold, and loan officers are
10 generally paid on volume," Cannon explained.

11 "Further, if a mortgage loan is sold it is generally accepted by
12 the lender that they have passed on the default risk to the
13 security holder," he added. "Therefore, it would seem that
14 there indeed could be an incentive for loan officers and the
15 bank to push for inflated home values in the case of sold
16 loans."

17 Cuomo's suit claims that eAppraiseIT provided appraisals or
18 appraisal reviews on roughly 262,000 properties for WaMu
19 between April 2006 and October 2007. If the average loan
20 size was \$200,000 to \$300,000, this would account for
21 between \$52.4 billion and \$78.6 billion of loans, Cannon
22 estimated.

23 During the period in question excluding October 2007,
24 WaMu originated \$275.4 billion of real-estate loans, selling
25 \$172.5 billion as mortgage-backed securities. As a result, the
26 loans appraised by eAppraiseIT could account for 19% to
27 29% of loan production, the analyst wrote.

28 The value of mortgages that could be "put back" to WaMu
29 may be about \$33 billion, Cannon estimated. That may
30 require additional reserves of \$412 million, or the equivalent
31 of 30 cents a share, he said.

32 In a worst-case scenario -- in which inflated appraisals were
33 systemic throughout WaMu -- the lender might need to set
34 aside an extra \$2.1 billion, or \$1.57 a share, of reserves, he
35 added.

36 "Although we attempt to put this issue in perspective with
37 these numbers, the issue is far too premature to include any
38 estimated expense in our earnings estimates," Cannon
39 cautioned. (Emphasis added.)

40 88. WaMu Stock currently trades below \$15.00 per share.

41 **BREACH OF FIDUCIARY DUTIES**

42 89. Each of the Defendants owed WaMu and the Company's shareholders fiduciary
43 duties of loyalty, good faith and due care.

1 90. Each of the Defendants were and are required to act in the best interests of WaMu
2 and the Company's shareholders, and not in furtherance of their own personal interests.

3 91. Each of the Defendants owes to WaMu and the Company's shareholders the
4 fiduciary duty to exercise good faith and diligence in the administration of the Company's
5 affairs, the use and preservation of its property and assets and the highest obligations of fair
6 dealing.

7 92. Each of the Defendants had a duty to promptly disseminate accurate and truthful
8 information with regard to the Company's revenue, margins, operations, performance,
9 management, projections and forecasts so that the market price of the Company's stock would be
10 based on truthful and accurate information.

11 93. Defendants, directly and/or indirectly, engaged in reckless and wrongful acts
12 complained of herein, including the dissemination of false and misleading information in the
13 various public statements issued by the Company.

14 94. During the Relevant Time Period, each of the Defendants was the agent of the
15 others and of WaMu, and was at all times acting within the course and scope of such agency.

16 95. To discharge their duties, Defendants were required to exercise reasonable and
17 prudent supervision over the management, policies, practices and controls of the financial affairs
18 of the Company. By virtue of such duties, Defendants were required to, among other things:

19 a. Refrain from acting upon material inside corporate information to benefit
20 themselves;
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1 b. Ensure that the Company complied with its legal obligations and
2 requirements, including acting only within the scope of its legal authority and disseminating
3 truthful and accurate statements to the investing public;

4 c. Conduct the affairs of the Company in an efficient, business-like manner
5 so as to make it possible to provide the highest quality performance of its business, to avoid
6 wasting the Company's assets, and to maximize the value of the Company's stock;

7 d. Properly and accurately guide investors and analysts as to the true
8 financial condition of the Company at any given time, including making accurate statements
9 about the Company's financial results and prospects, and ensuring that the Company maintained
10 an adequate system of financial controls such that the Company's financial reporting would be
11 true and accurate at all times;

12 e. Remain informed as to how WaMu conducted its operations, and, upon
13 receipt of notice or information of imprudent or unsound conditions or practices, make
14 reasonable inquiry in connection therewith, and take steps to correct such conditions or practices
15 and make such disclosures as necessary to comply with federal and state securities laws; and

16 f. Ensure that the Company was operated in a diligent, honest and prudent
17 manner in compliance with all applicable federal, state and local laws, rules and regulations.

18 96. Each of the Defendants, by virtue of his or her position as a director and/or officer
19 of the Company, owed to WaMu and the Company's shareholders the fiduciary duties of loyalty,
20 good faith and the exercise of due care in the management and administration of the affairs of the
21 Company, as well as in the use and preservation of its property and assets.
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1 97. The conduct of the Defendants complained of herein involves a knowing and
2 culpable violation of their obligations as directors and officers of WaMu, the absence of good
3 faith, and a reckless disregard for their duties to WaMu and the Company's shareholders that
4 each of the Defendants were aware or should have been aware posed a risk of serious injury to
5 the Company.
6

7 98. The conduct of the Defendants who were also officers and/or directors of WaMu
8 during the Relevant Period have been ratified by the remaining Defendants who collectively
9 comprised all of the Company's Board of Directors during the Relevant Time Period.

10 99. The Defendants breached their duties of loyalty and good faith by causing,
11 directly or indirectly, the Company to materially misrepresent its financial results and prospects,
12 as detailed herein, and by failing to prevent other Defendants from taking such illegal actions.
13

14 **CONSPIRACY, AIDING AND ABETTING AND CONCERTED ACTION**

15 100. In committing the wrongful acts alleged herein, each of the Defendants have
16 pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with
17 and conspired with one another in furtherance of their common plan or design. In addition to the
18 wrongful conduct herein alleged as giving rise to primary liability, each of the Defendants
19 further aided and abetted and/or assisted each other in breaching their respective duties.
20

21 101. During the Relevant Time Period, Defendants collectively and individually
22 initiated a course of conduct that was designed to: (i) conceal the fact that the Company was
23 improperly misrepresenting its business prospects; (ii) sell over \$16.3 million of their personally
24 held shares; and (iii) deceive the investing public, including the Company's shareholders,
25 regarding their management of the Company's operations, financial health and stability, as well
26

1 as its future business prospects. In furtherance of this plan, conspiracy and course of conduct,
2 Defendants collectively and individually took the actions set forth herein.

3 102. During the Relevant Time Period, Defendants caused the Company to conceal the
4 true fact that WaMu was misrepresenting its business prospects. The purpose and effect of
5 Defendants' conspiracy was, among other things, to disguise their breaches of fiduciary duty,
6 waste of corporate assets and unjust enrichment, as well as to conceal adverse information
7 concerning the Company's business operations, financial condition and future prospects.
8

9 103. Defendants accomplished their conspiracy, common enterprise and/or common
10 course of conduct by causing the Company to purposefully, recklessly or negligently release
11 improper statements. Because the actions described herein occurred under the authority of the
12 Board of Directors, each of the Defendants was a direct, necessary and substantial participant in
13 the conspiracy, common enterprise and/or common course of conduct complained of herein.
14

15 104. Each of the Defendants aided and abetted and rendered substantial assistance in
16 the wrongs complained of herein. In taking such actions to substantially assist the commission
17 of the wrongdoing complained of herein, each Defendant acted with knowledge of the primary
18 wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was aware of his
19 overall contribution to and furtherance of the wrongdoing.
20

21 **OBLIGATIONS OF OFFICERS AND DIRECTORS**

22 105. Each of the Defendants owed to WaMu and its shareholders the fiduciary
23 obligations of fidelity, trust, loyalty, and due care and diligence in the management and
24 administration of the affairs of the Company and in the use and preservation of its property and
25 assets, as well as the duty of full and candid disclosure of all material facts related thereto.

26 Further, each of the Defendants owed a duty to WaMu to ensure that it operated in compliance

1 with all applicable federal and state laws, rules and regulations, and that the Company not
2 engage in any unsafe, unsound, or illegal business practices.

3 106. To discharge these duties, each of the Defendants was required to exercise
4 reasonable and prudent supervision over the management, policies, practices, controls, and
5 financial and corporate affairs of WaMu. By virtue of this obligation of ordinary care and
6 diligence, each of the Defendants was required, among other things, to:
7

8 a. Manage, conduct, supervise, and direct the employees, businesses and
9 affairs of WaMu in accordance with laws, rules and regulations, and the charter and by-laws of
10 the Company;

11 b. Neither violate, nor knowingly or recklessly permit any officer, director or
12 employee of WaMu to violate applicable laws, rules and regulations, and exercise reasonable
13 control and supervision over such officers and employees; ensure the prudence and soundness of
14 policies and practices undertaken or proposed to be undertaken by the Company;

15 c. Remain informed as to how WaMu was, in fact, operating, and upon receiving
16 notice or information of unsafe, imprudent or unsound practices, to make reasonable
17 investigation in connection therewith and to take steps to correct that condition or practice;

18 d. Supervise the preparation, filing and/or dissemination of any SEC filing,
19 press release, audit, report or other information disseminated by WaMu, and to examine and
20 evaluate any reports of examinations or investigations concerning the practices, products or
21 conduct of the officers of the Company and to make full and accurate disclosure of all material
22 facts, concerning, *inter alia*, each of the subjects and duties set forth above;
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1 e. Preserve and enhance the Company's reputation as befits a public
2 corporation and to maintain public trust and confidence in WaMu as a prudently managed
3 institution fully capable of meeting its duties and obligations.

4 107. Each of the Defendants failed to exercise their fiduciary duties or make
5 reasonable inquiries to ensure that the Company's publicly reported financial statements were
6 compiled in accordance with GAAP.

7
8 **THE AUDIT COMMITTEE'S DUTIES AND RESPONSIBILITIES**

9 108. During the Relevant Time Period, Director Defendants Frank, Leppert, Murphy,
10 Reed and Smith were and are members of the Audit Committee. The Audit Committee's charter
11 provides that the committee shall provide assistance to the Company's Board of Directors in
12 fulfilling its responsibilities of oversight with respect to: the integrity of the Company's financial
13 reporting process and financial statements and systems of internal controls; the Company's
14 compliance with legal and regulatory requirements; the independent auditor's qualifications and
15 independence and performance; and the performance of the Company's internal audit function.
16 Accordingly, the Audit Committee was responsible for overseeing and directly participating in
17 the dissemination of the Company's earnings press releases and assessing its risk profile.

18
19 109. Director Defendants Frank, Leppert, Murphy, Reed and Smith breached their
20 fiduciary duties of due care, loyalty, and good faith because the Audit Committee participated in
21 the preparation of improper statements and earnings press releases that contained materially false
22 and misleading financial information. Moreover, these Director Defendants reviewed and failed
23 to correct the Company's false and misleading press releases and financial information described
24 above.
25
26

IMPROPER INSIDER SELLING

110. The Inside Seller Defendants, because of their respective positions, knew that, during the Relevant Time Period, the public statements by WaMu were incorrect. They also knew and understood that the misstatements would create an inflated stock price for WaMu Stock. The Inside Seller Defendants took advantage of this undisclosed information to sell their personally held WaMu Stock for considerably more than it was worth.

111. While in possession of undisclosed material adverse information, the Inside Seller Defendants sold the following shares of WaMu Stock:

Inside Seller Last Name	Transaction Date	Shares	Price	Proceeds
Casey	5/30/2006	22,155	\$45.32	\$1,004,064.60
	1/19/2007	13,890	\$44.67	\$620,466.30
	1/19/2007	410	\$44.67	\$18,314.70
	1/26/2007	3,968	\$45.31	\$179,790.08
	2/13/2007	8,528	\$44.77	\$381,798.56
	2/13/2007	2,504	\$44.76	\$112,079.04
	3/30/2007	1,246	\$40.38	\$50,313.48
		52,701		\$2,366,826.76
Corcoran	6/15/2007	1,590	\$43.07	\$68,481.30
		1,590		\$68,481.30
Farrell	2/15/2007	1,233	\$44.90	\$55,361.70
		1,233		\$55,361.70
Killinger	5/1/2006	20,000	\$44.90	\$898,000.00
	5/1/2006	100	\$44.91	\$4,491.00
	5/1/2006	7,400	\$44.95	\$332,630.00
	5/1/2006	6,500	\$44.96	\$292,240.00
	5/1/2006	6,400	\$44.97	\$287,808.00
	5/1/2006	1,200	\$44.98	\$53,976.00
	5/1/2006	2,200	\$44.99	\$98,978.00
	5/1/2006	6,200	\$45.00	\$279,000.00
	8/1/2006	400	\$44.34	\$17,736.00
	8/1/2006	600	\$44.35	\$26,610.00
	8/1/2006	1,300	\$44.36	\$57,668.00
8/1/2006	800	\$44.37	\$35,496.00	
8/1/2006	800	\$44.38	\$35,504.00	

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	8/1/2006	2,400	\$44.40	\$106,560.00
	8/1/2006	800	\$44.41	\$35,528.00
	8/1/2006	2,000	\$44.42	\$88,840.00
	8/1/2006	300	\$44.44	\$13,332.00
	8/1/2006	600	\$44.47	\$26,682.00
	8/1/2006	100	\$44.49	\$4,449.00
	8/1/2006	13,500	\$44.50	\$600,750.00
	8/1/2006	25,600	\$44.52	\$1,139,712.00
	8/1/2006	500	\$44.54	\$22,270.00
	8/1/2006	300	\$44.55	\$13,365.00
	8/1/2006	1,688	\$44.40	\$74,947.20
	11/1/2006	2,600	\$42.28	\$109,928.00
	11/1/2006	600	\$42.29	\$25,374.00
	11/1/2006	300	\$42.30	\$12,690.00
	11/1/2006	9,000	\$42.31	\$380,790.00
	11/1/2006	2,000	\$42.32	\$84,640.00
	11/1/2006	10,500	\$42.33	\$444,465.00
	11/1/2006	700	\$42.34	\$29,638.00
	11/1/2006	4,400	\$42.35	\$186,340.00
	11/1/2006	2,500	\$42.36	\$105,900.00
	11/1/2006	500	\$42.37	\$21,185.00
	11/1/2006	100	\$42.39	\$4,239.00
	11/1/2006	300	\$42.40	\$12,720.00
	11/1/2006	300	\$42.41	\$12,723.00
	11/1/2006	100	\$42.42	\$4,242.00
	11/1/2006	2,300	\$42.43	\$97,589.00
	11/1/2006	9,600	\$42.44	\$407,424.00
	11/1/2006	4,100	\$42.45	\$174,045.00
	11/1/2006	100	\$42.46	\$4,246.00
	1/19/2007	12,021	\$44.67	\$536,978.07
	1/26/2007	16,130	\$45.31	\$730,850.30
	2/1/2007	10,000	\$44.59	\$445,900.00
	2/1/2007	100	\$44.60	\$4,460.00
	2/1/2007	200	\$44.61	\$8,922.00
	2/1/2007	300	\$44.63	\$13,389.00
	2/1/2007	400	\$44.64	\$17,856.00
	2/1/2007	3,000	\$44.65	\$133,950.00
	2/1/2007	3,900	\$44.66	\$174,174.00
	2/1/2007	6,800	\$44.67	\$303,756.00
	2/1/2007	4,500	\$44.68	\$201,060.00
	2/1/2007	6,100	\$44.69	\$272,609.00
	2/1/2007	9,100	\$44.70	\$406,770.00
	2/1/2007	1,500	\$44.71	\$67,065.00
	2/1/2007	600	\$44.72	\$26,832.00
	2/1/2007	3,500	\$44.73	\$156,555.00
	5/1/2007	10,000	\$42.00	\$420,000.00

	5/1/2007	100	\$42.03	\$4,203.00
	5/1/2007	29,600	\$42.04	\$1,244,384.00
	5/1/2007	1,300	\$42.06	\$54,678.00
	5/1/2007	300	\$42.09	\$12,627.00
	5/1/2007	2,600	\$42.10	\$109,460.00
	5/1/2007	4,100	\$42.12	\$172,692.00
	5/1/2007	2,000	\$42.13	\$84,260.00
		279,839		\$12,268,180.57
Matthews	1/22/2007	1,440	\$45.00	\$64,800.00
		1,440		\$64,800.00
Rotella	1/19/2007	16,232	\$44.67	\$725,083.44
	1/19/2007	434	\$44.67	\$19,386.78
	1/26/2007	4,557	\$45.31	\$206,477.67
		21,223		\$950,947.89
Schneider	8/15/2006	821	\$44.05	\$36,165.05
	1/19/2007	3,952	\$44.67	\$176,535.84
	1/19/2007	214	\$44.67	\$9,559.38
	2/1/2007	2,308	\$44.59	\$102,913.72
	8/15/2007	1,187	\$32.57	\$38,660.59
	8/15/2007	1,207	\$32.57	\$39,311.99
		9,689		\$403,146.57
Woods	12/15/2006	1,464	\$45.23	\$66,216.72
	1/19/2007	1,155	\$44.67	\$51,593.85
		2,619		\$117,810.57

DEMAND FUTILITY

112. Plaintiffs have not demanded that the Company's Board of Directors bring the claims herein asserted because any such demand would be futile. Plaintiffs are excused from making a demand for the myriad reasons stated below.

113. This action is being pursued derivatively on behalf of WaMu inasmuch as the Company's Board of Directors is grossly conflicted. The Board of Directors cannot pursue a claim against the Director Defendants and the other Defendants since to do so would jeopardize the Company's directors and officers liability insurance coverage, which it is already being employed to defend the Company and its management, both former and current, in the pending

1 securities class actions. As such, the Board of Directors will not seek to recover the wrongful
2 gains received by the Director Defendants and the remaining Defendants.

3 114. The Board of Directors of WaMu consists of the following Defendants: Killinger,
4 Farrell, Frank, Leppert, Lillis, Matthews, Montoya, Murphy, Osmer-McQuade, Pugh, Reed,
5 Smith and Stever.
6

7 115. Among other things, WaMu's Board of Directors, during the Relevant Time
8 Period, failed to disclose the nature and extent of the Company's Option-ARM related exposures
9 and the attendant risks the same held for WaMu shareholders. Additionally, Defendants
10 Killinger, Farrell and Matthews breached their fiduciary duties to WaMu shareholders when
11 they, upon information and belief, sold shares of personally held WaMu Stock while in
12 possession of material non-public information. Thus demand upon them is futile.
13

14 116. As set forth above, Defendants, Frank, Leppert, Murphy, Reed and Smith are
15 members of the Audit Committee and face a sufficiently substantial likelihood of liability for
16 their breach of fiduciary duties attendant to their participation in the preparation of improper
17 statements and earnings press releases that contained materially false and misleading financial
18 information. In particular, they were supine in the face of growing credit problems and failed to
19 take corrective measures to address them or to clarify the false statements issued by Defendants
20 concerning the Company's exposure to such credit issues. The Audit Committee's members
21 further failed to ensure that WaMu fully disclosed all material information concerning the
22 Company's exposure to Option-ARMs, and that the Defendants' statements concerning Option-
23 Arms were accurate. Demand upon them is, likewise, futile.
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1 117. Each of the Director Defendants knew of and/or directly benefited from the
2 wrongdoing alleged herein.

3 118. The Director Defendants participated in, approved and/or permitted the
4 wrongdoings alleged herein to occur and participated in efforts to conceal or disguise them from
5 the Company's stockholders or recklessly and/or negligently disregarded the wrongs and, thus,
6 are not disinterested parties.
7

8 119. The acts complained of constitute violations of the Exchange Act and violations
9 of fiduciary duties owed by the Company's officers and directors and these acts are incapable of
10 ratification.

11 120. Each of the Director Defendants authorized and/or permitted the false statements
12 disseminated directly to the public or made directly to industry analysts, authorized and/or
13 permitted the issuance of various false and misleading statements and are principal beneficiaries
14 of the wrongdoing alleged herein, and thus could not fairly and fully prosecute such an action
15 even upon initiation of the same.
16

17 121. Plaintiffs have not made any demand on shareholders of WaMu to institute this
18 action since such demand would be a futile and useless act for the following reasons:

19 a. WaMu is a publicly held company with over 800 million shares
20 outstanding and thousands of shareholders;
21

22 b. Making demand on the entirety of the Company's shareholders would be
23 impossible for Plaintiffs who have no way of finding out the names, addresses or phone numbers
24 of shareholders; and
25
26

1 c. Making demand on all shareholders would force Plaintiffs to incur huge
2 expenses, assuming all shareholders could be individually identified.

3 **COUNT I**

4 **AGAINST ALL DEFENDANTS FOR BREACH OF FIDUCIARY DUTY**

5 122. Plaintiffs incorporate by reference and realleges each and every allegation
6 contained above, as though fully set forth herein.

7
8 123. Defendants owed and owe WaMu fiduciary obligations. By reason of their
9 fiduciary relationships, Defendants owed and owe WaMu the highest obligation of good faith,
10 fair dealing, loyalty and due care.

11 124. Defendants violated and breached their fiduciary duties of care, loyalty,
12 reasonable inquiry, oversight, good faith and supervision.

13 125. Defendants also each owed a duty to WaMu to test, oversee and monitor their
14 systems of internal disclosure, financial and accounting controls, governance procedures and
15 disclosures procedures and to ensure that they were functioning in an effective manner and in
16 compliance with, *inter alia*, the Sarbanes-Oxley Act of 2002.

17
18 126. Each of the Defendants had actual or constructive knowledge that they had caused
19 the Company to improperly misrepresent the financial results of the Company and failed to
20 correct the Company's publicly reported financial results and guidance. These actions could not
21 have been a good faith exercise of prudent business judgment to protect and promote the
22 Company's corporate interests.

23
24 127. As a direct and proximate result of Defendants' failure to perform their fiduciary
25 obligations, WaMu sustained significant damages. As a result of the misconduct alleged herein,
26 the Defendants are liable to the Company in an amount to be proven at trial.

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COUNT II

AGAINST ALL DEFENDANTS FOR ABUSE OF CONTROL

128. Plaintiffs incorporate by reference and realleges each and every allegation contained above, as though fully set forth herein.

129. Defendants' misconduct alleged herein constituted an abuse of their ability to control and influence WaMu, for which they are legally responsible.

130. As a direct and proximate result of Defendants' abuse of control, WaMu has sustained significant damages.

131. As a result of the misconduct alleged herein, Defendants are liable to the Company in an amount to be proven at trial.

COUNT III

AGAINST THE DEFENDANTS FOR GROSS MISMANAGEMENT

132. Plaintiffs incorporate by reference and realleges each and every allegation contained above, as though fully set forth herein.

133. By their actions alleged herein, Defendants, either directly or through aiding and abetting, abandoned and abdicated their responsibilities and fiduciary duties with regard to prudently managing the assets and business of WaMu in a manner consistent with the operations of a publicly held corporation.

134. As a direct and proximate result of the Defendants' gross mismanagement and breaches of duty alleged herein, WaMu has sustained significant damages in excess of hundreds of millions of dollars.

135. As a result of the misconduct and breaches of duty alleged herein, the Defendants are liable to the Company in an amount to be proven at trial.

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COUNT IV

AGAINST ALL DEFENDANTS FOR UNJUST ENRICHMENT

136. Plaintiffs incorporate by reference and realleges each and every allegation contained above, as though fully set forth herein.

137. By their wrongful acts and omissions, defendants were unjustly enriched at the expense of and to the detriment of WaMu.

138. Plaintiffs, as shareholders and representatives of WaMu, seek restitution from these defendants, and each of them, and seek an order of this Court disgorging all profits, benefits and other compensation obtained by these defendants, and each of them, from their wrongful conduct, fiduciary breaches and/or aiding and abetting wrongful conduct and breaches of fiduciary duties.

COUNT V

AGAINST INSIDE SELLING DEFENDANTS FOR BREACH OF FIDUCIARY DUTIES FOR INSIDE SELLING AND MISAPPROPRIATION OF INFORMATION

139. Plaintiffs incorporate by reference and realleges each and every allegation contained above, as though fully set forth herein.

140. At the time of their stock sales, Inside Selling Defendants knew the information described above and sold WaMu Stock on the basis of such information.

141. The information described above was proprietary, non-public information concerning the Company's financial condition and future business prospects. It was a proprietary asset belonging to the Company, which Inside Selling Defendants used for their own benefit when they sold WaMu Stock.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment as follows:

3 a. Determining that his suit is a proper derivative action and certifying
4 Plaintiffs as appropriate representatives of WaMu for said action;

5 b. Declaring that each of the Defendants breached his fiduciary duty to
6 WaMu;

7 c. Directing each of the Defendants to account to the Company for all
8 damages sustained or to be sustained by the Company and all profits obtained by Defendants by
9 reason of the wrongs alleged herein;

10 d. Requiring all Director Defendants to return to WaMu all compensation
11 paid to them during the Relevant Time Period;

12 e. Ordering Defendants, and those under their supervision and control, to
13 implement and enforce policies, practices and procedures on behalf of WaMu and its
14 stockholders that are designed to detect and prevent illegal conduct by the Company's employees
15 and representatives;

16 f. Directing each of the Defendants to pay interest at the highest rate
17 allowable by law on the amount of damages sustained by the Company and Inside Selling
18 Defendants' unlawful profits as a result of the culpable conduct of each of the Defendants;

19 g. Awarding Plaintiffs the costs and disbursements of this action, including
20 reasonable attorneys' and experts' fees, costs and expenses; and

21 h. Granting such other and further relief as the Court may deem just and
22 proper.
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1 **JURY DEMAND**

2 Plaintiffs demand a trial by jury.

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4 Dated: January 2, 2007

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6 BRESKIN JOHNSON & TOWNSEND, PLLC

7
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