

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

4 IN RE WASHINGTON MUTUAL, INC.
5 SECURITIES LITIGATION,

No. 2:08-md-1919 MJP
Lead Case No. C08-387 MJP

6 This Document Relates to: ALL ACTIONS

7 **STIPULATION AND AGREEMENT OF SETTLEMENT**
8 **WITH DEFENDANT DELOITTE & TOUCHE LLP**

9 This Stipulation and Agreement of Settlement (the "Stipulation") is entered into by and
10 between: (i) Ontario Teachers' Pension Plan Board ("Ontario Teachers"), Lead Plaintiff in the
11 consolidated class action styled *In re Washington Mutual, Inc. Securities Litigation*, No. 2:08-
12 md-1919 MJP, Lead Case No. C08-387 MJP (the "Action"¹), one of the actions that comprises
13 the Multidistrict Litigation captioned *In re Washington Mutual, Inc. Securities, Derivative &*
14 *ERISA Litigation*, Case No. 2:08-md-1919 MJP (W.D. Wash), on behalf of itself and the Class as
15 defined herein;² and (ii) Defendant Deloitte & Touche LLP ("Deloitte" and collectively with
16 Lead Plaintiff, the "Settling Parties") by and through their respective counsel and is subject to the
17 approval of the United States District Court for the Western District of Washington (the "District
18 Court"). Subject to certain limitations expressly provided herein, the Settlement provided for
19 herein is intended to settle and release all Settled Claims as defined in ¶ 1(oo) below.

20 ¹ The term "Action" expressly excludes *Flaherty & Crumrine Preferred Income Fund Inc. v.*
21 *Killinger et al.*, 09-1756 (W.D. Wash.) and *In re Washington Mutual, Inc. California Securities*
Litigation, 09-664 (W.D. Wash.).

22 ² All terms with initial capitalization not otherwise defined herein shall have the meanings
ascribed to them in paragraph 1 herein.

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1 WHEREAS:

2 A. Beginning in November 2007, three securities class actions, *Koesterer v.*
3 *Washington Mutual, Inc., et al.*, No. C08-0387 MJP; *Abrams and Roffe v. Washington Mutual,*
4 *Inc., et al.*, No. C-08-388 MJP; and *Garber v. Washington Mutual, Inc., et al.*, No. C08-465 MJP
5 (collectively the “Securities Actions”) were commenced in the United States District Court for
6 the Southern District of New York against Washington Mutual, Inc. (“WMI” or the “Company”) and
7 certain of its officers and directors who are also named as defendants in the Action. The
8 Securities Actions complaints alleged violations of Sections 10(b) and 20(a) of the Securities
9 Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder with respect to
10 public disclosures concerning the lending practices and financial condition of WMI. A fourth
11 putative securities class action, *Nelson v. Woods, et al.*, No. C 07-1809 MJP, was commenced in
12 the District Court and was voluntarily dismissed without prejudice on March 3, 2008.

13 B. On February 21, 2008 and March 17, 2008, the United States Judicial Panel on
14 Multidistrict Litigation ordered that the Securities Actions, together with a number of related
15 derivative and ERISA actions, be centralized for coordinated pretrial proceedings in the District
16 Court and that the Securities Actions pending in the District Court for the Southern District of
17 New York be transferred to the District Court.

18 C. On May 7, 2008, the District Court entered an Order consolidating the Securities
19 Actions and any related pending or subsequently filed actions into the Action; appointing
20 Ontario Teachers as Lead Plaintiff, Bernstein Litowitz Berger & Grossmann LLP as Lead
21 Counsel and Byrnes Keller Cromwell LLP as Liaison Counsel in the Action; and ordering Lead
22 Plaintiff to file an amended complaint.

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1 D. On May 13, 2008, Brockton Contributory Retirement System (“Brockton”)
2 commenced an action, *Brockton Contributory Retirement System v. Washington Mutual, Inc., et*
3 *al.*, No. C08-751 MJP, alleging claims under Sections 11, 12(a)(2) and/or 15 of the Securities
4 Act of 1933 (the “Securities Act”) against WMI, certain of the Underwriter Defendants, Deloitte,
5 certain of the Officer Defendants³ and the Outside Director Defendants⁴ in connection with the
6 (i) the August 2006 Offering of \$500 million of floating rate notes due August 24, 2009
7 (“Floating Rate Notes”) and \$400 million of 5.50% notes due August 24, 2011 (“5.50% Notes”);
8 (ii) the September 2006 Offering of \$500 million in Series K perpetual non-cumulative floating
9 rate preferred stock (“Series K Stock”); and (iii) the October 2007 Offering of \$500 million of
10 7.250% subordinated notes due November 1, 2017 (“7.250% Notes”). The Brockton action later
11 was consolidated into the Action, and Brockton became an additional named plaintiff in this
12 Action.

13 E. On August 5, 2008, Lead Plaintiff filed the Consolidated Class Action Complaint
14 (the “Consolidated Complaint”), which included Brockton as an additional named plaintiff. The
15 Consolidated Complaint asserted claims against WMI, Killinger, Casey, Cathcart, Rotella, and
16 Schneider under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder; and
17 against Killinger, Casey, Cathcart, Rotella, Schneider, Woods, Ballenger, and certain of the
18 Outside Director Defendants under Section 20(a) of the Exchange Act (the “Exchange Act

19 ³ The Officer Defendants are Kerry K. Killinger, Thomas W. Casey, Stephen J. Rotella, Ronald
20 J. Cathcart, David C. Schneider, John F. Woods, and Melissa J. Ballenger.

21 ⁴ The Outside Director Defendants are Anne V. Farrell, Stephen E. Frank, Thomas C. Leppert,
22 Charles M. Lillis, Phillip D. Matthews, Regina Montoya, Michael K. Murphy, Margaret Osmer
McQuade, Mary E. Pugh, William G. Reed, Jr., Orin C. Smith, James H. Stever and Willis B.
Wood, Jr.

1 Claims”). The Consolidated Complaint alleged that the defendants named in the Exchange Act
2 Claims made, or controlled others who made, materially false and misleading statements about,
3 among other things, the effectiveness of WMI’s risk management procedures, the fairness and
4 reliability of the appraisals received in connection with WMI’s loans, the quality of WMI’s
5 mortgage underwriting practices and WMI’s financial results, including the appropriate
6 allowances for its loan losses, and that these false and misleading statements caused the prices of
7 WMI’s securities to be artificially inflated during the Class Period. The Consolidated Complaint
8 also asserted claims against WMI, Killinger, Casey, Woods, the Outside Director Defendants,
9 Deloitte, the Underwriter Defendants, Lehman Brothers Inc. (“Lehman”) and Banc of America
10 Securities LLC (“BOA”) under Section 11 of the Securities Act; against WMI, the Underwriter
11 Defendants, Lehman and BOA under Section 12(a)(2) of the Securities Act; and against
12 Killinger, Casey, Woods, Ballenger, and the Outside Director Defendants under Section 15 of
13 the Securities Act (the “Securities Act Claims”). The Consolidated Complaint alleged that the
14 defendants named in the Securities Act Claims were statutorily liable for materially untrue
15 statements and misleading omissions in the registration statement and offering documents for
16 four public offerings WMI conducted during the Class Period, including the three offerings
17 included in the Brockton action and WMI’s December 2007 Offering of \$3 billion in 7.75%
18 Series R Non-Cumulative Perpetual Convertible Preferred Stock (“Series R Stock”).

19 F. On September 26, 2008, WMI and WMI Investment Corp. each filed a voluntary
20 petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”)
21 with the Bankruptcy Court, as jointly administered, *In re Washington Mutual, Inc.*, Case No. 08-
22 12229 (MFW) (the “Chapter 11 Cases”). As a result, all claims against WMI in the Action were

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1 stayed pursuant to 11 U.S.C. § 362(a).⁵

2 G. On December 8, 2008, all of the Defendants other than WMI and Lehman filed
3 motions to dismiss the Consolidated Complaint, which were fully briefed and argued to the
4 District Court. On May 15, 2009, the District Court entered an order granting in part and
5 denying in part the motions to dismiss. The District Court denied Defendants' motions to
6 dismiss the claims under the Securities Act concerning WMI's October 2007 securities offering,
7 but granted Defendants' motions to dismiss the Securities Act claims concerning WMI's August
8 2006, September 2006, and December 2007 securities offerings. Additionally, the District Court
9 ordered that the Exchange Act claims be re-pled.

10 H. On June 15, 2009, Lead Plaintiff filed the Amended Consolidated Class Action
11 Complaint (the "Amended Complaint"). In addition to Lead Plaintiff Ontario Teachers and
12 named plaintiff Brockton, the Amended Complaint included Pompano Beach Police and
13 Firefighters' Retirement System ("Pompano Beach"), Harlan Seymour ("Seymour"), and Police
14 and Fire Retirement System of the City of Detroit ("Detroit P&F") as named plaintiffs. Like the
15 Consolidated Complaint, the Amended Complaint asserted claims under Sections 10(b) and
16 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder; and under Sections 11,
17 12(a)(2) and 15 of the Securities Act. The Amended Complaint alleged claims substantially
18 similar to those in the Consolidated Complaint.

19 I. On July 17, 2009, all Defendants (except WMI and Lehman, as against which the

20
21 ⁵ On September 15, 2008, Lehman Brothers Holdings, Inc. filed for bankruptcy protection and
22 on September 19, 2008, the United States District Court for the Southern District of New York
entered an Order staying certain proceedings, including this Action, against Lehman pursuant to
11 U.S.C. § 362(a).

1 Action had been stayed) filed motions to dismiss the Amended Complaint. The motions were
2 fully briefed and argued to the District Court. On October 27, 2009, the District Court entered an
3 Order granting in part and denying in part the motion to dismiss the Amended Complaint. The
4 District Court sustained the Exchange Act claims against all the Defendants against whom they
5 were asserted. The District Court dismissed the Section 11 claims relating to the August 2006
6 offering of 5.50% Notes and the Section 12(a)(2) claims relating to the 5.50% Notes, the
7 Floating Rate Notes, and the Series K Stock, but sustained all other Securities Act claims
8 asserted.

9 J. On January 15, 2010, all Defendants other than WMI and Lehman filed answers
10 to the Amended Complaint.

11 K. On April 30, 2010, Lead Plaintiff filed a motion for class certification which was
12 fully briefed and argued to the District Court.

13 L. On October 12, 2010, the District Court entered an Order granting Lead Plaintiff's
14 motion for class certification except with respect to named plaintiff Seymour and the Series K
15 Stock. The District Court certified Lead Plaintiff and additional named plaintiffs Pompano
16 Beach, Brockton and Detroit P&F as class representatives and appointed Lead Counsel as Class
17 Counsel. The District Court excluded named plaintiff Seymour and the Series K Stock from the
18 certified class.⁶

19 M. On December 1, 2010, the Underwriter Defendants moved for judgment on the
20 pleadings, a motion in which all other Defendants (except for WMI and Lehman) joined,

21 _____
22 ⁶ Defendant BOA, which underwrote only the Series K Stock offering, was dismissed from the
Action as a result of the District Court's October 12, 2010 Order.

1 contending that the remaining Securities Act claims relating to the August 2006 and the
2 December 2007 offerings were barred by the statute of limitations. The District Court heard oral
3 argument on the motion on January 27, 2011 and denied the motion on January 28, 2011.

4 N. Pursuant to the District Court's Order dated November 25, 2009, the parties were
5 directed to engage in mediation to determine whether a consensual resolution of the Action could
6 be achieved. The Settling Parties, through their respective counsel, engaged in extensive arm's-
7 length negotiations that included mediation sessions on February 18 and 23, 2011 and March 24,
8 2011, with an experienced mediator, former United States District Judge Layn R. Phillips and in
9 additional extensive settlement discussions and negotiations during the time period of February
10 and March 2011, including the submission of detailed mediation briefs to Judge Phillips. With
11 Judge Phillips' assistance, on March 24, 2011, Lead Plaintiff reached an agreement to settle with
12 Deloitte on terms that included Deloitte's agreement to pay a total of \$18,500,000 in cash for the
13 benefit of Class Members with Securities Act Claims, in exchange for the dismissal of the claims
14 against it in the Action and the releases and other consideration provided for in this Stipulation.

15 O. Lead Counsel represents that it has conducted an investigation and pursued
16 discovery relating to the claims and the underlying events and transactions alleged in the
17 Amended Complaint. Lead Counsel represents that it has: (i) analyzed the evidence adduced
18 during its investigation and through discovery, which Lead Counsel represents included almost
19 500 witness interviews, review of over 23 million pages of documents produced by Defendants
20 and others, and dozens of depositions; (ii) consulted with numerous experts, including experts in
21 accounting and auditing, risk management, loss reserve modeling, statistical analysis and
22 damages; and (iii) researched the applicable law with respect to the claims of Lead Plaintiff and

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1 the Class against the Settling Defendant and the potential defenses thereto.

2 P. Based upon its investigation and what it has learned through its prosecution of the
3 Action, Lead Counsel has concluded that the terms and conditions of this Settlement are fair,
4 reasonable and adequate to Lead Plaintiff and the other members of the Class, and in their best
5 interests. Based on Lead Plaintiff's direct oversight of the prosecution of the Action, along with
6 the input of Lead Counsel, Lead Plaintiff has agreed to settle the sustained claims in the Action
7 against the Settling Defendant pursuant to the terms and provisions of this Stipulation, after
8 considering (i) the substantial benefits that Lead Plaintiff and the other members of the Class will
9 receive from the resolution of the Action as against the Settling Defendant, (ii) the attendant risks
10 of litigation, and (iii) the desirability of permitting the Settlement to be consummated as
11 provided by the terms of this Stipulation.

12 Q. Deloitte denies any wrongdoing, and this Stipulation shall in no event be
13 construed or deemed to be evidence of or an admission or concession on the part of Deloitte with
14 respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any
15 infirmity in the defenses that Deloitte has asserted, or could have asserted in the Action. Deloitte
16 represents that it is entering into this Settlement solely to avoid the cost and distraction of further
17 litigation.

18 NOW THEREFORE, without any admission or concession on the part of Lead Plaintiff
19 of any lack of merit of the Action whatsoever, and without any admission or concession of any
20 liability or wrongdoing or lack of merit in its defenses whatsoever by Deloitte, it is hereby
21 STIPULATED AND AGREED, by and among the parties to this Stipulation, through their
22 respective attorneys, subject to entry of the Judgment of the District Court pursuant to Rule 23(e)

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1 of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Settling
2 Parties from the Settlement, that all Settled Claims as against the Released Defendant Parties and
3 all Released Defendant Parties' Claims shall be compromised, settled, released and dismissed,
4 with prejudice, upon and subject to the following terms and conditions:

5 **DEFINITIONS**

6 1. As used in this Stipulation, the following terms shall have the following
7 meanings:

8 (a) "Additional Named Plaintiffs" means Pompano Beach Police and
9 Firefighters' Retirement System, Brockton Contributory Retirement System, and Police and Fire
10 Retirement System of the City of Detroit.

11 (b) "Alternative Judgment" means a form of final judgment that may be
12 entered by the District Court but in a form other than the form of Judgment provided for in this
13 Stipulation.

14 (c) "Amended Complaint" means the Amended Consolidated Class Action
15 Complaint filed in the Action by Lead Plaintiff on or about June 15, 2009.

16 (d) "Authorized Claimant" means for purposes of this Stipulation a Class
17 Member with a potential Securities Act Claim in the Action who submits a timely and valid
18 Proof of Claim Form to the Claims Administrator, in accordance with the requirements
19 established by the District Court, that is approved for payment from the Net Settlement Fund.

20 (e) "Bankruptcy Court" means the United States Bankruptcy Court for the
21 District of Delaware.

22 (f) "Chapter 11 Cases" means the proceedings before the Bankruptcy Court

1 styled *In re Washington Mutual, Inc. et al.*, Chapter 11, Case No 08-12229 (MFW).

2 (g) "Claim" means a completed and signed Proof of Claim Form submitted to
3 the Claims Administrator in accordance with the instructions on the Proof of Claim Form.

4 (h) "Claim Form" or "Proof of Claim Form" means the form, substantially in
5 the form attached hereto as Exhibit A-2, that a Claimant or Class Member must complete in
6 order for that Claimant or Class Member to be eligible to share in a distribution of the Net
7 Settlement Fund.

8 (i) "Claimant" means a person or entity that submits a Claim Form to the
9 Claims Administrator seeking to share in the proceeds of the Net Settlement Fund.

10 (j) "Claims Administrator" means the firm retained by Lead Plaintiff and
11 Lead Counsel, subject to approval of the District Court, to provide all notices approved by the
12 District Court to potential Class Members and to administer the Settlement.

13 (k) "Class" means the Class defined in paragraph 870 of the Amended
14 Complaint and modified by Orders of the District Court dated May 15, 2009, October 27, 2009,
15 and October 12, 2010. Specifically, the Class includes all persons and/or entities who purchased
16 or otherwise acquired the following securities issued by WMI and its subsidiaries: WMI
17 common stock; Floating Rate Notes offered in WMI's August 2006 Offering (CUSIP
18 939322AW3); the 7.250% Notes offered in WMI's October 2007 Offering (CUSIP
19 939322AY9); the 7.75% Series R Non-Cumulative Perpetual Convertible Preferred Stock
20 offered in WMI's December 2007 Offering (CUSIP 939322814); and Washington Mutual
21 Capital Trust 2001's 5.375% Trust Preferred Income Equity Redeemable Securities (PIERS)
22 Units, maturing 7/1/2041 ("Capital Trust Unit Preferred") (CUSIP 939322848) (collectively, the

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1 “WMI Class Securities”) during the period from October 19, 2005 to July 23, 2008 (the “Class
2 Period”), and were damaged thereby. Excluded from the Class are (i) Defendants; (ii) members
3 of the Immediate Family of each Individual Defendant; (iii) any other person who was an officer
4 or director of WMI, Deloitte, any of the Underwriter Defendants, Lehman, or BOA during the
5 Class Period; (iv) any firm, trust, corporation, or other entity in which any Defendant has or had
6 a controlling interest; (v) any person who participated in the wrongdoing alleged in the Action;
7 (vi) TPG Capital and other purchasers of equity securities issued by WMI in connection with the
8 \$7 billion capital issuance pursuant to the agreements entered into by and among TPG Capital
9 and WMI and other investors, announced by the Company on April 8, 2008 (the “TPG Deal”), to
10 the extent that such purchasers exercised distinct rights and diligence opportunities afforded
11 them in connection with the TPG Deal; and (vii) the legal representatives, agents, affiliates,
12 heirs, beneficiaries, successors-in-interest, or assigns of any such excluded party, provided that
13 any Investment Vehicle (as defined herein) shall not be deemed an excluded person or entity by
14 definition. Also excluded from the Class are any persons or entities who exclude themselves by
15 filing a request for exclusion in accordance with the requirements set forth in the Notice.

16 (l) “Class Distribution Order” means an order entered by the District Court
17 authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to
18 Authorized Claimants.

19 (m) “Class Member” means a person or entity that is a member of the Class
20 and does not exclude himself, herself or itself by filing a request for exclusion in accordance
21 with the requirements set forth in the Notice.

22 (n) “Class Period” means the period from October 19, 2005 to July 23, 2008.

1 (o) "Defendants" means all persons and entities that were named as
2 defendants in the Consolidated Complaint or the Amended Complaint.

3 (p) "District Court" means the United States District Court for the Western
4 District of Washington at Seattle.

5 (q) "Effective Date" means the first business day on which, unless otherwise
6 waived by the Settling Parties, all of the events and conditions specified in ¶ 30 of this
7 Stipulation have been met and have occurred.

8 (r) "Escrow Account" means the account maintained at Valley National
9 Bank to hold the Settlement Fund, which account, subject to the District Court's supervisory
10 authority, shall be under the control of Lead Counsel.

11 (s) "Escrow Agent" means Valley National Bank.

12 (t) "Escrow Agreement" means the agreement between Lead Counsel and the
13 Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow
14 Account.

15 (u) "Final," with respect to any order or judgment, including the Judgment or,
16 if applicable, the Alternative Judgment, means: (i) if no appeal is filed, the expiration date of the
17 time provided for filing or noticing of any appeal under the Federal Rules of Civil Procedure,
18 i.e., thirty (30) days after entry of the order or judgment; or (ii) if there is an appeal from the
19 order or judgment, the date of (a) final dismissal of all such appeals, or the final dismissal of any
20 proceeding on certiorari or otherwise to review the order or judgment, or (b) the date the order or
21 judgment is finally affirmed on appeal, the expiration of the time to file a petition for a writ of
22 certiorari or other form of review, or the denial of a writ of certiorari or other form of review,

1 and, if certiorari or other form of review is granted, the date of final affirmance of the order or
2 judgment following review pursuant to that grant; provided, however, that any appeal or
3 proceeding seeking subsequent judicial review pertaining solely to an order issued with respect
4 to (i) attorneys' fees, costs or expenses, or (ii) the plan of allocation, shall not in any way delay
5 or preclude the Judgment or Alternative Judgment from becoming Final.

6 (v) "Immediate Family" means an individual's spouse, parents, siblings,
7 children, grandparents, grandchildren; the spouses of his or her parents, siblings and children;
8 and the parents and siblings of his or her spouse, and includes step and adoptive relationships. In
9 this paragraph, "spouse" shall mean a husband, a wife, or a partner in a state-recognized
10 domestic partnership or civil union.

11 (w) "Investment Vehicle" means any investment company or pooled
12 investment fund, including but not limited to mutual fund families, exchange-traded funds, fund
13 of funds and hedge funds, in which any Underwriter Defendant, BOA or Lehman has or may
14 have a direct or indirect interest, or as to which its affiliates may act as an investment advisor;
15 but in which the Underwriter Defendant, BOA or Lehman or any of the their respective affiliates
16 is not a majority owner or does not hold a majority beneficial interest. This definition does not
17 bring into the Class any of the Underwriter Defendants, BOA or Lehman.

18 (x) "Judgment" means the final judgment, to be entered by the District Court
19 approving the Settlement, substantially in the form attached hereto as Exhibit B, to be entered
20 pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

21 (y) "Lead Counsel" means the law firm of Bernstein Litowitz Berger &
22 Grossmann LLP.

1 (z) "Lead Plaintiff" means Ontario Teachers' Pension Plan Board.

2 (aa) "Liaison Counsel" means the law firm of Byrnes Keller Cromwell LLP.

3 (bb) "Litigation Expenses" means costs and expenses incurred in connection
4 with commencing and prosecuting the Action (which may include the costs and expenses of
5 Plaintiffs directly related to their representation of the Class), for which Lead Counsel intends to
6 apply to the District Court for reimbursement from the Settlement Fund.

7 (cc) "Net Settlement Fund" means the Settlement Fund less: (i) any Taxes;
8 (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the District
9 Court; and (iv) any attorneys' fees awarded by the District Court.

10 (dd) "Notice" means the Notice of (I) Pendency of Class Action and Proposed
11 Settlements, (II) Settlement Fairness Hearing, and (III) Motion for an Award of Attorneys' Fees
12 and Reimbursement of Litigation Expenses, which is to be sent to members of the Class,
13 substantially in the form attached hereto as Exhibit A-1.

14 (ee) "Notice and Administration Costs" means the costs, fees and expenses that
15 are incurred by the Claims Administrator and/or Lead Counsel in connection with (i) providing
16 notice to the Class; and (ii) administering the Claims process as well as the costs, fees and
17 expenses incurred in connection with the Escrow Account.

18 (ff) "Officer and Director Defendants" or "Individual Defendant(s)" means
19 Defendants Kerry K. Killinger, Thomas W. Casey, Stephen J. Rotella, Ronald J. Cathcart, David
20 C. Schneider, John F. Woods, Melissa J. Ballenger, Anne V. Farrell, Stephen E. Frank, Thomas
21 C. Leppert, Charles M. Lillis, Phillip D. Matthews, Regina Montoya, Michael K. Murphy,
22 Margaret Osmer McQuade, Mary E. Pugh, William G. Reed, Jr., Orin C. Smith, James H. Stever

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1 and Willis B. Wood, Jr.

2 (gg) "Other Defendants" means, for purposes of this Settlement, WMI, the
3 Underwriter Defendants, Lehman and the Officer and Director Defendants, as defined herein.⁷

4 (hh) "Plaintiffs" means Lead Plaintiff and the Additional Named Plaintiffs.

5 (ii) "Plaintiffs' Counsel" means Lead Counsel, Liaison Counsel and all other
6 legal counsel who, at the direction and under the supervision of Lead Counsel, performed
7 services on behalf of the Class.

8 (jj) "Plan of Allocation" means the proposed plan of allocation of the Net
9 Settlement Fund set forth in the Notice.

10 (kk) "Preliminary Approval Order" means the order, substantially in the form
11 attached hereto as Exhibit A, to be entered by the District Court preliminarily approving the
12 Settlement and directing notice be provided to the Class.

13 (ll) "Related Parties" means as to Deloitte & Touche LLP, Deloitte LLP,
14 Deloitte Consulting LLP, Deloitte Financial Advisory Services LLP, Deloitte Tax LLP, Deloitte
15 Services LP, all of their and Deloitte & Touche LLP's respective, past, present and future parent
16 companies, subsidiaries, affiliates, divisions, joint venturers, subcontractors, agents, attorneys,
17 insurers, subrogees, co-insurers and reinsurers, and each of their respective, past and present
18 officers, directors, employees, members, partners, principals, shareholders and owners.
19 Notwithstanding the foregoing, Related Parties do not include any of the Other Defendants or
20 any of the Other Defendants' Related Parties as defined in the Stipulation and Agreement of

21 _____
22 ⁷ Defendant BOA was dismissed from the Action as a result of the District Court's October 12, 2010 Order.

1 Settlement in this Action between Lead Plaintiff and the Underwriter Defendants or in the
2 Stipulation and Agreement of Settlement in this Action between Lead Plaintiff and the Officer
3 and Director Defendants and WMI.

4 (mm) "Released Defendant Parties" means the Settling Defendant and each of
5 its Related Parties.

6 (nn) "Released Defendant Parties' Claims" means any and all claims, rights,
7 demands, liabilities or causes of action of every nature and description whatsoever (including,
8 but not limited to, any claims for damages, interest, attorney's fees, expert or consulting fees, and
9 any other costs, expenses or liabilities whatsoever), whether based on federal, state, local,
10 statutory or common law or any other law, rule or regulation, including both known claims and
11 Unknown Claims, that have been or could have been asserted in the Action or in this or any other
12 forum by or on behalf of the Released Defendant Parties or any of them, or the successors and
13 assigns of any of them against Lead Plaintiff, Lead Counsel, Liaison Counsel, any other Class
14 Member or any of their respective attorneys, which arise out of or relate in any way to the
15 institution, prosecution, or settlement of the Action (except for claims to enforce the Settlement).
16 Nothing herein shall be deemed to release or otherwise impair any claims or defenses against the
17 Debtors or other Defendants in the Action other than as specified in the Bar Order.

18 (oo) "Settled Claims" means any and all claims, rights, demands, liabilities, or
19 causes of action of every nature and description whatsoever (including, but not limited to, any
20 claims for damages, interest, attorney's fees, expert or consulting fees, and any other costs,
21 expenses or liabilities whatsoever), to the fullest extent that the law permits their release in this
22 Action, by or on behalf of Lead Plaintiff or any other Class Members against any of the Released

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1 Defendant Parties that have been alleged or could have been alleged in the Action, whether based
2 on federal, state, local, statutory or common law or any other law, rule or regulation, whether
3 known claims or Unknown Claims, whether class or individual in nature, whether fixed or
4 contingent, accrued or un-accrued, liquidated or unliquidated, whether at law or in equity,
5 matured or unmatured, that (i) are based on, relate to or arise out of the allegations, transactions,
6 facts, matters, events, disclosures, statements, occurrences, representations, acts or omissions or
7 failures to act that have been or could have been alleged in the Action, and/or (ii) relate to or
8 arise out of Lead Plaintiff's or any other Class Member's purchase, acquisition or holding of
9 WMI Released Securities during the Class Period insofar as it relates in any way to any other
10 matter covered in this definition of Settled Claims. Settled Claims do not include, release, bar,
11 waive, impair or otherwise impact (i) any claims to enforce the Settlement; (ii) any claims of the
12 Class or any Class Member against any of the Other Defendants; (iii) the rights of any Class
13 Members to recover moneys from the settlement of the action styled: *In re Washington Mutual*
14 *Inc. ERISA Litig.*, Lead Case No. 07-cv-1874; (iv) any claims asserted in the actions styled *In re*
15 *Washington Mutual, Inc. California Securities Litigation*, No. 09-664 (W.D. Wash.), *Flaherty &*
16 *Crumrine Preferred Income Fund Incorporated, et al. v. Killinger, et al.*, No. C09-1756 MJP
17 (W.D. Wash.), *Boilermakers National Annuity Trust Fund v. WaMu Mortgage Pass-Through*
18 *Certificates et al.*, 09-37 (W.D. Wash.), and *Alliance Bank, et al. v. JP Morgan Chase Bank, NA*
19 *et al.*, Index No. 650398/2011 (N.Y. Supreme); (v) any claim or right to recovery of the Class or
20 any Class Member individually in the Chapter 11 Cases and their rights to participate in the
21 distribution of funds in the Chapter 11 Cases upon confirmation of a plan of reorganization or
22 otherwise; or (vi) Lead Plaintiff's and each other Class Member's right to participate in the

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1 distribution of any funds recovered by any governmental or regulatory agency from any of the
2 Defendants.

3 (pp) "Settlement" means the compromise and settlement between the Settling
4 Parties contemplated by this Stipulation.

5 (qq) "Settlement Amount" means Eighteen Million Five Hundred Thousand
6 Dollars (\$18,500,000), in cash.

7 (rr) "Settlement Fund" means the Settlement Amount plus any and all interest
8 earned thereon.

9 (ss) "Settlement Hearing" means the hearing set by the District Court under
10 Rule 23(e)(1)(c) of the Federal Rules of Civil Procedure to consider final approval of the
11 Settlement.

12 (tt) "Settling Defendant" or "Deloitte" means Defendant Deloitte & Touche
13 LLP.

14 (uu) "Settling Defendant's Counsel" means the law firm of Latham & Watkins
15 LLP.

16 (vv) "Settling Parties" means the Settling Defendant and Lead Plaintiff, on
17 behalf of itself and the other Class Members, including the Additional Named Plaintiffs.

18 (ww) "Summary Notice" means the Summary Notice of (I) Pendency of Class
19 Action and Proposed Settlements, (II) Settlement Fairness Hearing, and (III) Motion for an
20 Award of Attorneys' Fees and Reimbursement of Litigation Expenses, substantially in the form
21 attached hereto as Exhibit A-3, to be published as set forth in the Preliminary Approval Order.

22 (xx) "Taxes" means: (i) all federal, state and/or local taxes of any kind on any

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1 income earned by the Settlement Fund after it is deposited into the Escrow Account; and (ii) the
2 expenses and costs incurred by Lead Counsel in connection with determining the amount of, and
3 paying, any federal, state and/or local taxes of any kind owed by the Settlement Fund (including,
4 without limitation, expenses of tax attorneys and accountants).

5 (yy) "Underwriter Defendants" means Goldman, Sachs & Co., Morgan Stanley
6 & Co., Incorporated (now known as Morgan Stanley & Co. LLC), Credit Suisse Securities
7 (USA) LLC, Deutsche Bank Securities Inc., UBS Securities LLC, J.P. Morgan Securities Inc.,
8 Barclays Capital Inc., Keefe, Bruyette & Woods, Inc., Cabrera Capital Markets, LLC, the
9 Williams Capital Group, L.P., Citigroup Global Markets, Inc., Greenwich Capital Markets,
10 Inc.(now known as RBS Securities Inc.), BNY Mellon Capital Markets LLC (successor to BNY
11 Capital Markets, Inc.), and Samuel A. Ramirez & Company, Inc.⁸

12 (zz) "Unknown Claims" means any Settled Claims which Lead Plaintiff or any
13 other Class Member does not know or suspect to exist in his, her or its favor at the time of the
14 release of the Released Defendant Parties, and any Released Defendant Parties' Claims which
15 any Released Defendant Party does not know or suspect to exist in his, her, or its favor at the
16 time of the release of Lead Plaintiff, Lead Counsel, Liaison Counsel, the other Class Members
17 and their respective attorneys, which, if known by him, her or it, might have affected his, her or
18 its decision(s) with respect to this Settlement. With respect to any and all Settled Claims and
19 Released Defendant Parties' Claims, the Settling Parties stipulate and agree that, upon the
20 Effective Date, Lead Plaintiff and Settling Defendant shall expressly waive, and each of the other

21 ⁸ Due to the bankruptcy filing and SIPIC liquidation, the Action has been stayed against Lehman
22 pursuant to § 362(a) of the Bankruptcy Code. BOA, which was the underwriter for the Series K
Stock, was dismissed pursuant to the Court's October 12, 2010 Order.

1 Class Members and each of the other Released Defendant Parties shall be deemed to have
2 waived, and by operation of the Judgment shall have expressly waived, any and all provisions,
3 rights, and benefits conferred by any law of any state or territory of the United States, or
4 principle of common law or foreign law, which is similar, comparable, or equivalent to
5 California Civil Code §1542, which provides:

6 A general release does not extend to claims which the creditor does not know or
7 suspect to exist in his or her favor at the time of executing the release, which if
8 known by him or her must have materially affected his or her settlement with the
9 debtor.

10 Lead Plaintiff and Settling Defendant acknowledge, and each of the other Class Members and
11 each of the other Released Defendant Parties shall be deemed by operation of law to have
12 acknowledged, that the foregoing waiver was separately bargained for and a key element of the
13 Settlement.

14 (aaa) "WMI" means Washington Mutual, Inc.

15 (bbb) "WMI Class Securities" means WMI common stock; Floating Rate Notes
16 offered in WMI's August 2006 Offering (CUSIP 939322AW3); the 7.250% Notes offered in
17 WMI's October 2007 Offering (CUSIP 939322AY9); the 7.75% Series R Non-Cumulative
18 Perpetual Convertible Preferred Stock offered in WMI's December 2007 Offering (CUSIP
19 939322814); and Washington Mutual Capital Trust 2001's 5.375% Trust Preferred Income
20 Equity Redeemable Securities (PIERS) Units, maturing 7/1/2041 ("Capital Trust Unit
21 Preferred") (CUSIP 939322848).

22 (ccc) "WMI Released Securities" means WMI common stock; Floating Rate
Notes offered in WMI's August 2006 Offering (CUSIP 939322AW3); 5.50% Notes offered in

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1 WMI's August 2006 Offering (CUSIP 939322AX1); the Series K Stock offered in WMI's
2 September 2006 Offering (CUSIP 939322830); the 7.250% Notes offered in WMI's October
3 2007 Offering (CUSIP 939322AY9); the 7.75% Series R Non-Cumulative Perpetual Convertible
4 Preferred Stock offered in WMI's December 2007 Offering (CUSIP 939322814); and
5 Washington Mutual Capital Trust 2001's 5.375% Trust Preferred Income Equity Redeemable
6 Securities (PIERS) Units, maturing 7/1/2041 ("Capital Trust Unit Preferred") (CUSIP
7 939322848).

8 **RELEASE OF CLAIMS**

9 2. The obligations incurred pursuant to this Stipulation shall be in full and final
10 disposition of the Action as against the Settling Defendant only, and shall fully and finally
11 release any and all Settled Claims as against all Released Defendant Parties and shall also release
12 Lead Plaintiff, Lead Counsel, Liaison Counsel, each of the other Class Members and each of
13 their respective attorneys from any and all Released Defendant Parties' Claims.

14 3. Upon the Effective Date, Lead Plaintiff and each of the other members of the
15 Class on behalf of themselves, their respective heirs, executors, administrators, predecessors,
16 successors and assigns, shall be deemed by operation of law to have released, waived, discharged
17 and dismissed each and every Settled Claim as against every Released Defendant Party covered
18 by the Judgment, and shall forever be enjoined from prosecuting any or all Settled Claims
19 against any such Released Defendant Party.

20 4. Upon the Effective Date, Settling Defendant and each of the other Released
21 Defendant Parties covered by the Judgment, on behalf of themselves, their respective heirs,
22 executors, administrators, predecessors, successors and assigns, shall be deemed by operation of

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1 law to have released, waived, discharged and dismissed each and every of the Released
2 Defendant Parties' Claims as against Lead Plaintiff, Lead Counsel, Liaison Counsel, every other
3 Class Member and each of their respective attorneys and shall forever be enjoined from
4 prosecuting any or all of the Released Defendant Parties' Claims against Lead Plaintiff, Lead
5 Counsel, Liaison Counsel, every other Class Member and each of their respective attorneys.

6 **THE SETTLEMENT CONSIDERATION**

7 5. In consideration of the Settlement of the Settled Claims against the Settling
8 Defendant and the other Released Defendant Parties, in full satisfaction of the Settling
9 Defendant's monetary obligations under the terms of the Settlement, Deloitte shall pay Eighteen
10 Million Five Hundred Thousand Dollars (\$18,500,000) in cash, such amount to be deposited into
11 the Escrow Account within thirty (30) calendar days after the latter of: (a) the District Court
12 entering an order preliminarily approving this Stipulation and the Settlement; and (b) receipt by
13 Settling Defendant's Counsel from Lead Counsel of full and complete wiring or other
14 instructions necessary for such payment, an executed W-9 for the Settlement Fund, and payee
15 name and address for delivery of payment by check.

16 **ADMINISTRATION AND USE OF SETTLEMENT FUND**

17 6. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and
18 Administration Costs; (c) any Litigation Expenses awarded by the District Court; and (d) any
19 attorneys' fees awarded by the District Court. The balance remaining in the Settlement Fund,
20 that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in
21 ¶¶ 16-25 below.

22 7. Except as provided herein or pursuant to orders of the District Court, the Net

1 Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held
2 by the Escrow Agent shall be deemed to be in the custody of the District Court and shall remain
3 subject to the jurisdiction of the District Court until such time as the funds shall be distributed or
4 returned pursuant to the terms of this Stipulation and/or further Order of the District Court. The
5 Escrow Agent shall invest any funds in the Escrow Account in United States Treasury Bills (or a
6 mutual fund invested solely in such instruments) and shall collect and reinvest all interest
7 accrued thereon, except that any residual cash balance in the Escrow Account of less than
8 \$250,000.00 may be invested in money market mutual funds comprised exclusively of
9 investments secured by the full faith and credit of the United States. In the event that the yield
10 on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any
11 portion of the funds held by the Escrow Agent may be deposited in a non-interest bearing
12 account that is fully insured by the FDIC.

13 8. The Settling Parties agree that the Settlement Fund is intended to be a Qualified
14 Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel,
15 as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-
16 2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax
17 returns as may be necessary or appropriate (including, without limitation, the returns described in
18 Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Such returns shall be consistent
19 with this paragraph and in all events shall reflect that all taxes on the income earned on the
20 Settlement Fund shall be paid out of the Settlement Fund as provided below. Lead Counsel shall
21 also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed
22 with respect to the Settlement Fund. Upon written request, Settling Defendant will provide to

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1 Lead Counsel the statement described in Treasury Regulation § 1.468B-3(e). Lead Counsel, as
2 administrator of the Settlement Fund within the meaning of Treasury Regulation §1.468B-
3 2(k)(3), shall timely make such elections as are necessary or advisable to carry out this
4 paragraph, including, as necessary, making a “relation back election,” as described in Treasury
5 Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the
6 earliest allowable date, and shall take or cause to be taken all actions as may be necessary or
7 appropriate in connection therewith.

8 9. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the
9 Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement,
10 and without prior Order of the District Court. Any tax returns prepared for the Settlement Fund
11 (as well as the election set forth therein) shall be consistent with the previous paragraph and in
12 all events shall reflect that all Taxes (including any interest or penalties) on the income earned by
13 the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

14 10. This is not a claims-made settlement. Upon the occurrence of the Effective Date,
15 neither Deloitte, its insurers, nor any other person or entity who or which paid any portion of the
16 Settlement Amount on Deloitte’s behalf, shall have any right to the return of the Settlement Fund
17 or any portion thereof irrespective of the number of Claims filed, the collective amount of losses
18 of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to
19 Authorized Claimants from the Net Settlement Fund.

20 11. The Claims Administrator shall discharge its duties under Lead Counsel’s
21 supervision and subject to the jurisdiction of the District Court. Except as otherwise provided
22 herein, the Released Defendant Parties shall have no responsibility whatsoever for the

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1 administration of the Settlement, and shall have no liability whatsoever to any person, including,
2 but not limited to, the Class Members, in connection with any such administration, including any
3 of the items described in paragraphs 6 through 12 herein. Lead Counsel shall cause the Claims
4 Administrator to mail the Notice and Proof of Claim to those members of the Class at the address
5 of each such person as set forth in the records of WMI (to the extent that it is able to obtain such
6 records), or its transfer agent, or who otherwise may be identified through reasonable effort.
7 Lead Counsel will cause the Summary Notice to be published pursuant to the terms of the
8 Preliminary Approval Order or whatever other form or manner might be ordered by the District
9 Court.

10 12. Lead Counsel may pay from the Settlement Fund, without further approval from
11 Settling Defendant or further order of the District Court, all reasonable Notice and
12 Administration Costs actually incurred. Such costs and expenses shall include, without
13 limitation, the actual costs of publication, printing and mailing the Notice, reimbursements to
14 nominee owners for forwarding the Notice to their beneficial owners, the administrative
15 expenses incurred and fees charged by the Claims Administrator in connection with providing
16 Notice and processing the submitted claims, and the fees, if any, of the Escrow Agent. In the
17 event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and
18 Administration Costs paid or incurred, including any related fees, shall not be returned or repaid
19 to the Settling Defendant, its insurers, or to any other person or entity who or which paid any
20 portion of the Settlement Amount on its behalf.

21 **ATTORNEYS' FEES AND LITIGATION EXPENSES**

22 13. Lead Counsel will apply to the District Court for a collective award of attorneys'

1 fees to Plaintiffs' Counsel which shall be a percentage of the Settlement Fund to be approved by
2 Lead Plaintiff. Lead Counsel also will apply to the District Court for reimbursement of
3 Litigation Expenses to be paid from the Settlement Fund. Neither Settling Defendant, its insurer,
4 nor any other Released Defendant Party, shall take any position with respect to Lead Counsel's
5 application for an award of attorneys' fees and/or Litigation Expenses. Such matters are not the
6 subject of any agreement between Settling Defendant and Lead Plaintiff other than what is set
7 forth in this Stipulation, and this Stipulation shall otherwise be enforceable according to its terms
8 without regard to any modification, denial, appeal or other adverse ruling with respect to Lead
9 Counsel's application for an award of attorneys' fees, costs or expenses.

10 14. Any attorneys' fees and Litigation Expenses that are awarded by the District
11 Court shall be paid to Lead Counsel immediately from the Settlement Fund upon award,
12 notwithstanding the existence of any timely filed objections thereto, or potential for appeal
13 therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiffs'
14 Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, plus
15 accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is
16 terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further
17 proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or
18 Litigation Expenses is reduced or reversed. Plaintiffs' Counsel shall make the appropriate refund
19 or repayment in full no later than thirty (30) days after receiving from Settling Defendant's
20 Counsel or from a court of appropriate jurisdiction notice of the termination of the Settlement or
21 notice of any reduction of the award of attorneys' fees and/or Litigation Expenses. An award of
22 attorneys' fees and/or Litigation Expenses is not a necessary term of this Stipulation or this

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1 Settlement and is not a condition of this Stipulation or this Settlement. Lead Plaintiff and Lead
2 Counsel may not cancel or terminate the Stipulation or the Settlement based on the District
3 Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation Expenses.
4 Apart from its obligation to pay or cause the payment of the Settlement Amount as set forth in
5 ¶ 5 above, Settling Defendant shall have no liability or obligation to Lead Plaintiff, any other
6 Class Members or their respective counsel or Lead or Liaison Counsel, with respect to any
7 attorneys' fees, costs or expenses, regardless of the amount of any attorneys' fees, costs or
8 expenses approved by the District Court, and regardless of any termination of this Stipulation or
9 the Settlement contained herein.

10 15. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs'
11 Counsel in a manner which it, in good faith, believes reflects the contributions of such counsel to
12 the prosecution and settlement of the Action.

13 **CLAIMS ADMINISTRATOR**

14 16. The Claims Administrator shall administer the process of receiving, reviewing
15 and approving or denying claims under Lead Counsel's supervision and subject to the
16 jurisdiction of the District Court. Settling Defendant shall have no responsibility whatsoever for
17 the administration of the Settlement or the claims process and shall have no liability whatsoever
18 to any person, including, but not limited to, Lead Plaintiff, any other Class Members or Lead
19 Counsel in connection with such administration. Settling Defendant's Counsel shall cooperate in
20 the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

21 17. The Claims Administrator shall receive Claims and determine first, whether the
22 Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's *pro rata* share

1 of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim compared
2 to the total Recognized Claims of all Authorized Claimants (as set forth in the Plan of Allocation
3 set forth in the Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of
4 allocation as the District Court approves).

5 18. The Plan of Allocation proposed in the Notice is not a necessary term of this
6 Stipulation and it is not a condition of this Stipulation that any particular plan of allocation be
7 approved by the District Court. Notwithstanding the foregoing, it is understood and agreed that
8 the Net Settlement Fund as defined herein shall, subject to certain contingencies set forth in the
9 Notice, be used to compensate only Authorized Claimants as defined herein. Lead Plaintiff and
10 Lead Counsel may not cancel or terminate the Stipulation or the Settlement based on the District
11 Court's or any appellate court's ruling with respect to the Plan of Allocation, any modification
12 made to the Plan of Allocation, or any other plan of allocation as may be ordered by the District
13 Court in this Action. Neither Settling Defendant nor any other Released Defendant Party shall
14 have any involvement in or responsibility or liability whatsoever for the Plan of Allocation or the
15 allocation of the Net Settlement Fund.

16 19. Any Class Member who does not submit a valid Claim Form will not be entitled
17 to receive any distribution from the Net Settlement Fund but will otherwise be bound by all of
18 the terms of this Stipulation and the Settlement, including the terms of the Judgment to be
19 entered in the Action and the releases provided for therein, and will be permanently barred and
20 enjoined from bringing any action, claim, or other proceeding of any kind against any Released
21 Defendant Party concerning any Settled Claim.

22 20. Lead Counsel shall be responsible for supervising the administration of the

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1 Settlement and disbursement of the Net Settlement Fund. Neither Settling Defendant, nor any
2 other Released Defendant Party, shall have any liability, obligation or responsibility whatsoever
3 for the administration of the Settlement or disbursement of the Net Settlement Fund. Neither
4 Settling Defendant nor any other Released Defendant Party shall be permitted to review, contest
5 or object to any Claim Form or any decision of the Claims Administrator or Lead Counsel with
6 respect to accepting or rejecting any Claim Form or Claim for payment by a Class Member.
7 Lead Counsel shall have the right, but not the obligation, to waive what it deems to be formal or
8 technical defects in any Claim Forms submitted in the interests of achieving substantial justice.

9 21. For purposes of determining the extent, if any, to which a Class Member shall be
10 entitled to be treated as an Authorized Claimant, the following conditions shall apply:

11 a. Each Class Member shall be required to submit a Claim Form, substantially in
12 the form attached hereto as Exhibit 2 to Exhibit A, supported by such documents as are
13 designated therein, including proof of the Claimant's loss with respect to Securities Act Claims,
14 or such other documents or proof as the Claims Administrator or Lead Counsel, in their
15 discretion, may deem acceptable;

16 b. All Claim Forms must be submitted by the date set by the District Court in the
17 Preliminary Approval Order and specified in the Notice, unless such deadline is extended by
18 Order of the District Court. Any Class Member who fails to submit a Claim Form by such date
19 shall be forever barred from receiving any distribution from the Net Settlement Fund or payment
20 pursuant to this Stipulation (unless, by Order of the District Court, late-filed Claim Forms are
21 accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the
22 Settlement, including the terms of the Judgment and the releases provided for therein and herein,

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1 and will be permanently barred and enjoined from bringing any action, claim or other proceeding
2 of any kind against any Released Defendant Party concerning the Settled Claims. Provided that
3 it is received before the motion for the Class Distribution Order is filed, a Claim Form shall be
4 deemed to be submitted when posted, if received with a postmark indicated on the envelope and
5 if mailed by first-class mail and addressed in accordance with the instructions thereon. In all
6 other cases, the Claim Form shall be deemed to have been submitted when actually received by
7 the Claims Administrator;

8 c. Each Claim Form shall be submitted to and reviewed by the Claims
9 Administrator, under the supervision of Lead Counsel, who shall determine in accordance with
10 this Stipulation the extent, if any, to which each Claim shall be allowed, subject to review by the
11 District Court pursuant to subparagraph (e) below;

12 d. Claim Forms that do not meet the submission requirements may be rejected.
13 Prior to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with
14 the Claimant in writing, to give the Claimant the chance to remedy any curable deficiencies in
15 the Claim Form submitted. The Claims Administrator, under supervision of Lead Counsel, shall
16 notify, in a timely fashion and in writing, all Claimants whose Claim the Claims Administrator
17 proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such
18 notice that the Claimant whose Claim is to be rejected has the right to a review by the District
19 Court if the Claimant so desires and complies with the requirements of subparagraph (e) below;

20 e. If any Claimant whose Claim has been rejected in whole or in part desires to
21 contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the
22 notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and

1 statement of reasons indicating the Claimant's grounds for contesting the rejection along with
2 any supporting documentation, and requesting a review thereof by the District Court. If a
3 dispute concerning a Claim cannot be otherwise resolved, Lead Counsel shall thereafter present
4 the request for review to the District Court; and

5 f. The administrative determinations of the Claims Administrator accepting and
6 rejecting Claims shall be presented to the District Court, on notice to Settling Defendant's
7 Counsel, for approval by the District Court in the Class Distribution Order.

8 22. Each Claimant shall be deemed to have submitted to the jurisdiction of the
9 District Court with respect to the Claimant's Claim, and the Claim will be subject to
10 investigation and discovery under the Federal Rules of Civil Procedure, provided that such
11 investigation and discovery shall be limited to that Claimant's status as a Class Member and the
12 validity and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this
13 Action or this Settlement in connection with the processing of Claim Forms.

14 23. Lead Counsel will apply to the District Court, on notice to Settling Defendant, for
15 a Class Distribution Order: (a) approving the Claims Administrator's administrative
16 determinations concerning the acceptance and rejection of the Claims submitted; (b) approving
17 payment of any administration fees and expenses associated with the administration of the
18 Settlement from the Escrow Account, and (c) if the Effective Date has occurred, directing
19 payment of the Net Settlement Fund to Authorized Claimants from the Escrow Account.

20 24. Payment pursuant to the Class Distribution Order shall be final and conclusive
21 against all Class Members. All Class Members whose Claims are not approved by the District
22 Court shall be barred from participating in distributions from the Net Settlement Fund. Whether

1 or not a Class Member submits a Claim, or any Claim is not allowed either in whole or in part,
2 all Class Members shall be bound by all of the terms of this Stipulation and the Settlement,
3 including the terms of the Judgment to be entered in the Action and the releases of all Released
4 Defendant Parties as provided for therein and herein, and will be permanently barred and
5 enjoined from bringing any action, claim or other proceeding against any and all Released
6 Defendant Parties concerning the Settled Claims.

7 25. All proceedings with respect to the administration, processing and determination
8 of Claims and the determination of all controversies relating thereto, including disputed
9 questions of law and fact with respect to the validity of Claims, shall be subject to the
10 jurisdiction of the District Court.

11 **PRELIMINARY APPROVAL OF THE SETTLEMENT**

12 26. As soon as practical after execution of this Stipulation, the Settling Parties shall
13 apply to the District Court for entry of an order preliminarily approving the proposed Settlement,
14 substantially in the form of the Preliminary Approval Order annexed hereto as Exhibit A.

15 **TERMS OF THE JUDGMENT**

16 27. If the Settlement contemplated by this Stipulation is approved by the District
17 Court, Lead Counsel and Settling Defendant's Counsel shall request that the District Court enter
18 a Judgment, substantially in the form annexed hereto as Exhibit B, pursuant to Rule 54(b) of the
19 Federal Rules of Civil Procedure.

20 28. The Judgment shall contain a provision barring claims for contribution to the
21 fullest extent permitted by 15 U.S.C. §78u-4(f)(7) and any other applicable law or regulation, by
22 or against the Settling Defendant substantially in the form set forth in Exhibit B (the "Bar

1 Order”). Nothing herein is intended to broaden the language of the Private Securities Litigation
2 Reform Act of 1995.

3 29. The Judgment shall also contain a provision substantially in the form set forth in
4 Exhibit B requiring that any final verdict or judgment that may be obtained by or on behalf of the
5 Class or a Class Member against any person or entity subject to the Bar Order shall be reduced
6 by the greater of: (i) an amount that corresponds to the percentage of responsibility of the
7 Settling Defendant for common damages; or (ii) the amount paid by or on behalf of the Settling
8 Defendant to the Class or Class Member for common damages.

9 **CONDITIONS OF SETTLEMENT AND EFFECT OF TERMINATION**

10 30. The Effective Date of this Stipulation shall be conditioned on the occurrence or
11 waiver of all of the following events:

12 (a) the District Court has entered the Preliminary Approval Order,
13 substantially in the form set forth in Exhibit A annexed hereto;

14 (b) the Settlement Amount has been deposited in an Escrow Account in
15 accordance with the provisions of ¶ 5 hereof;

16 (c) Settling Defendant has not exercised its option to terminate the Settlement
17 pursuant to ¶¶ 31 or 32 hereof; and

18 (d) the District Court has entered the Judgment with respect to the Settlement,
19 substantially in the form set forth in Exhibit B annexed hereto and the Judgment has become
20 Final, or the District Court has entered an Alternative Judgment and Settling Defendant has not
21 elected to terminate the Settlement and the Alternative Judgment has become Final.

22 31. Deloitte and Lead Plaintiff shall each have the right to terminate the Settlement

1 and this Stipulation by providing written notice of its election to do so to the other party within
2 thirty (30) days of: (a) the District Court's declining to enter the Preliminary Approval Order in
3 any material respect; (b) the District Court's refusal to approve this Stipulation and Settlement or
4 any material part of it; (c) the District Court's declining to enter the Judgment, or any Alternative
5 Judgment to which the Settling Defendant has consented, in any material respect; (d) the date
6 upon which the Judgment is modified or reversed in any material respect by the Court of Appeals
7 or the Supreme Court; or (e) the date upon which an Alternative Judgment is modified or
8 reversed in any material respect by the Court of Appeals or the Supreme Court. However, any
9 decision with respect to an application for attorneys' fees or Litigation Expenses, or with respect
10 to any plan of allocation, shall not be considered material to the Settlement, shall not affect the
11 finality of the Judgment, or an Alternative Judgment and shall not be grounds for termination by
12 any party.

13 32. In addition to the grounds set forth in ¶ 31, Deloitte shall have the right to
14 terminate the Settlement and this Stipulation in the event that Class Members requesting
15 exclusion from the Class meet the conditions set forth in a confidential supplemental agreement
16 with Lead Plaintiff that is being executed concurrently with this Stipulation (the "Supplemental
17 Agreement"). The Supplemental Agreement shall not be filed with the District Court and its
18 terms shall not be disclosed in any other manner (other than the statements herein and in the
19 Notice) unless and until the District Court requires the Settling Parties to file the Supplemental
20 Agreement or disclose its terms or a dispute arises between Lead Plaintiff and Settling Defendant
21 concerning its interpretation or application. If submission of the Supplemental Agreement is
22 required for resolution of a dispute or is otherwise ordered by the District Court, Lead Plaintiff

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1 and Settling Defendant will undertake to have the Supplemental Agreement submitted to the
2 District Court *in camera*.

3 33. Except as otherwise provided herein, in the event that the Settlement is
4 terminated, the Settlement and this Stipulation shall be null and void, and without prejudice, and
5 none of their terms shall be effective or enforceable and the facts of the Settlement shall not be
6 admissible in any trial of this Action, and the Settling Parties shall be deemed to have reverted to
7 their respective status in this Action immediately prior to March 24, 2011 and, except as
8 otherwise expressly provided, the parties shall proceed in all respects as if this Stipulation and
9 any related orders had not been entered, and any portion of the Settlement consideration
10 previously paid or caused to be paid by Settling Defendant, together with any interest earned
11 thereon, less any Taxes paid or due with respect to such income, and less Notice and
12 Administration Costs actually incurred and paid or payable, shall be returned to the persons or
13 entities who or which funded the Settlement, as appropriate, within fourteen (14) business days
14 after joint written notification of such event by Settling Defendant's Counsel and Lead Counsel
15 to the Escrow Agent pursuant to the terms of the Escrow Agreement.

16 **NO ADMISSION OF WRONGDOING**

17 34. This Stipulation and Settlement, whether or not consummated, and any
18 proceedings taken pursuant to it:

19 a. shall not be offered or received against any of the Released Defendant
20 Parties as evidence of, or construed as, or deemed to be evidence of, any presumption,
21 concession, or admission by any of the Released Defendant Parties with respect to the truth of
22 any fact alleged by Lead Plaintiff or the validity of any claim that was or could have been

1 asserted against any of the Released Defendant Parties in this Action or in any litigation, or the
2 deficiency of any defense that has been or could have been asserted in the Action or in any
3 litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the
4 Released Defendant Parties;

5 b. shall not be offered or received against any of the Released Defendant
6 Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or
7 omission with respect to any statement or written document approved or made by any of the
8 Released Defendant Parties, or against the Lead Plaintiff or any other Class Members as
9 evidence of any infirmity in the claims of Lead Plaintiff or the other Class Members;

10 c. shall not be offered or received against any of the Released Defendant
11 Parties, or against the Lead Plaintiff or any other Class Members, as evidence of a presumption,
12 concession or admission with respect to any liability, negligence, fault or wrongdoing of any
13 kind, or in any way referred to for any other reason as against any of the Released Defendant
14 Parties, or against the Lead Plaintiff or any other Class Members in any other civil, criminal or
15 administrative action or proceeding, other than such proceedings as may be necessary to
16 effectuate the provisions of this Stipulation; provided, however, that, if this Stipulation is
17 approved by the District Court, the Settling Defendant, any other Released Defendant Party,
18 Lead Plaintiff and the other Class Members may refer to it to effectuate the protections from
19 liability granted hereunder or otherwise to enforce the terms of the Settlement;

20 d. shall not be construed against any of the Released Defendant Parties, Lead
21 Plaintiff or any other Class Members as an admission, concession, or presumption that the
22 consideration to be given hereunder represents the amount which could be or would have been

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1 recovered after trial; and

2 e. shall not be construed against Lead Plaintiff or any other Class Members
3 as an admission, concession, or presumption that any of their claims are without merit or that
4 damages recoverable under the Amended Complaint would not have exceeded the Settlement
5 Amount.

6 **MISCELLANEOUS PROVISIONS**

7 35. All of the exhibits attached hereto are hereby incorporated by reference as though
8 fully set forth herein.

9 36. The Settling Defendant warrants that, as to the payments made or to be made by
10 or on behalf of it at the time of entering into this Stipulation and at the time of such payment that
11 it made or caused or will make or cause to be made pursuant to the terms above, it was not
12 insolvent, nor will the payment required to be made by or on behalf of it render it insolvent,
13 within the meaning of and/or for the purposes of the Bankruptcy Code, including but not limited
14 to §§ 101 and 547 thereof. This representation is made by the Settling Defendant and not by its
15 counsel.

16 37. If a case is commenced in respect of the Settling Defendant, any insurer, or any
17 other person or entity contributing funds to the Settlement Fund on behalf of the Settling
18 Defendant under the Bankruptcy Code, or a trustee, receiver, conservator, or other fiduciary is
19 appointed under any similar law, and in the event of the entry of a final order of a court of
20 competent jurisdiction determining the transfer of money to the Settlement Fund or any portion
21 thereof by or on behalf of the Settling Defendant to be a preference, voidable transfer, fraudulent
22 transfer or similar transaction and any portion thereof is required to be returned, and such amount

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1 is not promptly deposited to the Settlement Fund by others, then, at the election of Lead Plaintiff,
2 the Settling Parties shall jointly move the District Court to vacate and set aside the releases given
3 and the Judgment or Alternative Judgment, if applicable, entered in favor of the Settling
4 Defendant and its Related Parties pursuant to this Stipulation, which releases and Judgment, or
5 Alternative Judgment, shall be null and void as to the Settling Defendant and its Related Parties,
6 and the parties shall be restored to their respective positions in the litigation as provided in ¶ 33
7 and any cash amounts in the Settlement Fund shall be returned as provided in the same
8 paragraph.

9 38. The Settling Parties intend this Settlement to be a final and complete resolution of
10 all disputes asserted or which could be asserted by the Lead Plaintiff or any other Class Members
11 against any of the Released Defendant Parties with respect to the Settled Claims. Accordingly,
12 Lead Plaintiff and Settling Defendant agree not to assert that this Action was brought by Lead
13 Plaintiff or defended by Settling Defendant in bad faith or without a reasonable basis. No
14 Settling Party shall assert any claims of any violation of Rule 11 of the Federal Rules of Civil
15 Procedure relating to the prosecution, defense, or settlement of this Action. The Settling Parties
16 agree that the amount paid and the other terms of this Settlement were negotiated at arm's-length
17 in good faith by the parties, including at a mediation conducted by a former United States
18 District Judge, and reflect a Settlement that was reached voluntarily after consultation with
19 experienced legal counsel.

20 39. This Stipulation may not be modified or amended, nor may any of its provisions
21 be waived except by a writing signed by all signatories hereto or their successors-in-interest.

22 40. The headings herein are used for the purpose of convenience only and are not

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1 meant to have legal effect.

2 41. The administration and consummation of this Settlement as embodied in this
3 Stipulation shall be under the authority of the District Court, and the District Court shall retain
4 jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and
5 Litigation Expenses to Lead Counsel and enforcing the terms of this Stipulation.

6 42. The waiver by one party of any breach of this Stipulation by any other party shall
7 not be deemed a waiver by any party of any other prior or subsequent breach of this Stipulation.

8 43. This Stipulation and its exhibits constitute the entire agreement among the
9 Settling Parties concerning this Settlement, and no representations, warranties, or inducements
10 have been made by any Settling Party concerning this Stipulation and its exhibits other than
11 those contained and memorialized in such documents and the Supplemental Agreement.

12 44. This Stipulation may be executed in one or more original and/or faxed
13 counterparts. All executed counterparts and each of them shall be deemed to be one and the
14 same instrument.

15 45. This Stipulation shall be binding upon, and inure to the benefit of, the successors
16 and assigns of the Settling Parties.

17 46. The construction, interpretation, operation, effect and validity of this Stipulation,
18 and all documents necessary to effectuate it, shall be governed by the internal laws of the State of
19 Washington without regard to conflicts of laws, except to the extent that federal law requires that
20 federal law govern.

21 47. This Stipulation shall not be construed more strictly against one party than
22 another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel

1 for one of the parties, it being recognized that it is the result of arm's-length negotiations among
2 the parties and all parties have contributed substantially and materially to the preparation of this
3 Stipulation.

4 48. All counsel and any other person executing this Stipulation and any of the
5 exhibits hereto, or any related Settlement documents, warrant and represent that they have the
6 full authority to do so and that they have the authority to take appropriate action required or
7 permitted to be taken pursuant to the Stipulation to effectuate its terms.

8 49. Lead Counsel and Settling Defendant's Counsel agree to cooperate fully with one
9 another in seeking District Court approval of the Preliminary Approval Order, the Stipulation
10 and this Settlement, and to use best efforts to promptly agree upon and execute all such other
11 documentation as may be reasonably required to obtain such approvals.

12 50. If any party is required to give notice to another party under this Stipulation, such
13 notice shall be in writing and shall be deemed to have been duly given upon receipt of hand
14 delivery or facsimile transmission with confirmation of receipt. Notice shall be provided as
15 follows:

16	If to Lead Plaintiff or	Bernstein Litowitz Berger & Grossmann LLP
17	Lead Counsel:	1285 Avenue of the Americas
18		New York, New York 10019
19		Telephone: (212) 554 1400
20		Facsimile: (212) 554 1444
21		Attn: Hannah G. Ross, Esq.
22		


1 If to Deloitte:

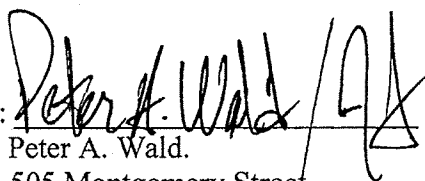
Latham & Watkins LLP
505 Montgomery Street
San Francisco, CA 94111
Telephone: (415)-391-0600
Facsimile: (415) 395-8095
Attn: Peter A. Wald, Esq.

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3
4
5 DATED: New York, New York
June 30, 2011.

6 **BERNSTEIN LITOWITZ BERGER &
7 GROSSMANN LLP**

LATHAM & WATKINS LLP

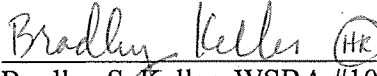
8 By: 
9 Hannah G. Ross
10 1285 Avenue of the Americas
11 New York, New York 10019
Telephone: (212) 554-1400
Facsimile: (212) 554-1444

By: 
Peter A. Wald.
505 Montgomery Street
San Francisco, California 94111
Telephone: (415) 391-0600
Facsimile: (415) 395-8095

12 *Lead Counsel for Lead Plaintiff
and the Class*

Counsel for Defendant Deloitte & Touche LLP

13 **BYRNES KELLER CROMWELL LLP**

14
15 By:  (HK)
16 Bradley S. Keller, WSBA #10665
17 Jofrey M. McWilliam, WSBA# 28441
18 1000 Second Avenue, Suite 3800
Seattle, Washington 98104
Telephone: (206) 622-2000
Facsimile: (206) 622-2522

19 *Liaison Counsel for Plaintiffs*

20
21
22
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