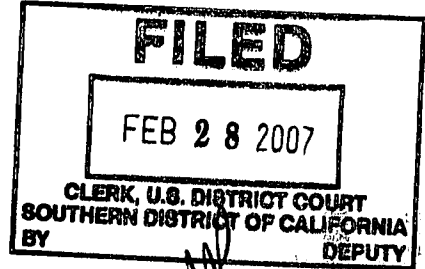


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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10 **AT SAN DIEGO**

11 LUZ M. ZAPIEN, Individually And On Behalf
12 Of All Others Similarly Situated,

13 Plaintiff,

14 v.

15
16 WASHINGTON MUTUAL, INC., WM TRUST
17 I, WM TRUST II, WM STRATEGIC ASSET
MANAGEMENT PORTFOLIOS, LLC, WM
18 FINANCIAL SERVICES, INC., WM ADVISORS,
INC., WM FUNDS DISTRIBUTOR, INC., EDGE
19 ASSET MANAGEMENT, INC., PRINCIPAL
FINANCIAL GROUP, INC., PRINCIPAL
20 INVESTORS FUND, INC., PRINCIPAL FUNDS
DISTRIBUTOR, INC.,

21 Defendants.
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Case No. '07CV 0385 DMS CAB

CLASS ACTION COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS

JURY TRIAL DEMANDED

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1 Plaintiff Luz M. Zapien, by and through counsel, alleges the following based upon the
2 investigation of counsel, which included a review of United States Securities and Exchange
3 Commission (“SEC”) filings, as well as other regulatory filings, reports, and advisories, press
4 releases, and media reports about Washington Mutual, Inc., and its related entities also named herein
5 as defendants. Plaintiff believes that substantial additional evidentiary support will exist for the
6 allegations set forth herein after a reasonable opportunity for discovery.

7 **INTRODUCTION**

8 1. This is a federal class action that seeks to redress a scheme by WAMU (as defined
9 herein) to defraud investors. For years, WAMU had an insidious undisclosed “preferred list” and
10 similarly misleading disclosures regarding their revenue-sharing, kickback and other cash and non-
11 cash incentive programs designed to improperly incent its broker/dealers to push WAMU’s
12 proprietary group of funds, the WM Group of Funds (the “Proprietary Funds”) and thereby drive
13 sales, regardless of their appropriateness or superior alternatives for the individual retail investor.¹
14 Instead of offering fair, honest, and unbiased advice to plaintiff and other investors, WAMU gave
15 predetermined and biased recommendations and pushed clients into its own funds, in order to
16 improperly maximize returns at the expense of its retail investors and enjoy millions of dollars in
17 kickbacks from other WAMU entities, with whom it had struck secret deals. WAMU must be held
18 liable for its failure to disclose these kickback and incentive schemes and the inherent and
19 insurmountable conflicts of interest they created.

20 2. Plaintiff brings this federal class action on behalf of all persons - other than
21 Defendants (as defined herein) and any person or entity related to or affiliated with any defendant -
22 who purchased or otherwise acquired shares, units or other like interests of any of the Proprietary
23 Funds, as listed below, between March 1, 2004 and March 1, 2005, inclusive, through WM Financial
24 Services, Inc. (“WMFS”), and were damaged thereby. Plaintiff is pursuing remedies for Defendants’
25

26 ¹The Proprietary Funds, as described in this complaint are: Money Market, Tax-Exempt Money Market, U.S.
27 Government Securities, Income, High Yield, Tax-Exempt Bond, REIT, Small Cap Value, Equity Income, Growth &
28 Income, West Coast Equity, Mid Cap Stock, California Money, Short Term Income, California Municipal, California
Insured Intermediate Municipal, Growth, International Growth, Small Cap Growth, Strategic Growth, Conservative
Growth, Balanced, Conservative Balanced, and Flexible Income.

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1 violations of the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of
2 1934 (the "Exchange Act").

3 3. This action charges Defendants with engaging in an unlawful and deceitful course
4 of conduct designed to improperly financially advantage WAMU to the detriment of plaintiff and
5 other members of the Class. As an integral part of WAMU's scheme to enhance revenue, WAMU
6 created layers of affiliate companies to skim fees and other charges from its retail investors with the
7 understanding that its retail brokerage arm, WMFS (and its sales force), would steer as many
8 unwitting clients as possible into these Proprietary Funds under the guise of unbiased investment
9 advice.

10 4. WAMU hid the true nature of its "preferred list", revenue sharing, kickback and
11 other incentive schemes from plaintiff and the Class, knowing that if the truth were revealed, no
12 reasonable investor would invest in the Proprietary Funds based upon the advice of WMFS and its
13 sales team.

14 5. "Preferred lists" and kickback programs similar to those described herein have
15 been the subject of considerable public outcry and have been condemned by the SEC and the courts
16 of the United States. WAMU has yet avoided liability for its participation in these insidious schemes
17 to defraud the investing public; however WAMU's escape from justice must end with this lawsuit.

18 **JURISDICTION AND VENUE**

19 6. This Court has jurisdiction over the subject matter of this action pursuant to
20 section 22 of the Securities Act (15 U.S.C. § 77v); section 27 of the Exchange Act (15 U.S.C. §
21 78aa); and 28 U.S.C. §§ 1331, 1337.

22 7. Venue is proper in this District pursuant to Section 27 of the Exchange Act (15
23 U.S.C. § 78aa) and 28 U.S.C. § 1391. Substantial acts in furtherance of the alleged fraud, including
24 the preparation and dissemination of materially false and misleading information, occurred within
25 this District.

26 8. In connection with the acts alleged herein, Defendants directly or indirectly, used
27 the means and instrumentalities of interstate commerce, including but not limited to the mails,
28 interstate telephone communications, and the facilities of the national securities markets.

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PARTIES

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2 9. Plaintiff Luz M. Zapien, is a resident of San Diego, California and purchased her
3 shares, units or like interests of the Proprietary Funds (Growth & Income and West Coast Equity
4 Funds) through WMFS as broker in San Diego. Plaintiff purchased her shares, units or like interest
5 in the name of her mother, Maria Carmen Higareda.

6 10. Defendant Washington Mutual, Inc. ("Washington Mutual") is a financial services
7 company organized as a Washington corporation, that at all times material maintained its corporate
8 headquarters at Seattle, Washington, and during the Class Period was the parent entity of defendants
9 WM Trust I, WM Trust II, WM Strategic Asset Management Portfolios, LLC, WM Financial
10 Services, Inc., WM Funds Distributor, Inc., WM Shareholder Services, Inc., and WM Advisors, Inc.

11 11. Defendant WM Trust I is an open-end management investment company,
12 organized as a Massachusetts business trust, and issued the following Proprietary Funds during the
13 Class Period: Money Market, Tax-Exempt Money Market, U.S. Government Securities, Income,
14 High Yield, Tax-Exempt Bond, REIT, Small Cap Value, Equity Income, Growth & Income, West
15 Coast Equity, and Mid Cap Stock.

16 12. Defendant WM Trust II is an open-end management investment company
17 organized as a Massachusetts business trust, and issued the following Proprietary Funds during the
18 Class Period: California Money, Short Term Income, California Municipal, California Insured
19 Intermediate Municipal, Growth, International Growth, and Small Cap Growth.

20 13. Defendant WM Strategic Asset Management Portfolios, LLC ("WM Portfolios")
21 is an open-end management investment company, organized as a Massachusetts limited liability
22 company, and issued the following Proprietary Funds during the Class Period: Strategic Growth,
23 Conservative Growth, Balanced, Conservative Balanced, and Flexible Income.

24 14. Defendant WM Financial Services, Inc. is a financial services company organized
25 as a Washington corporation, that at all times material maintained its corporate headquarters at
26 Seattle, Washington, and during the Class Period, acted as broker/dealer for WAMU and the
27 Proprietary Funds.

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1 15. Defendant WM Advisors, Inc. ("WM Advisors") is a financial services company
2 organized as a Washington corporation, and during the Class Period, acted as the advisor for WAMU
3 and the Proprietary Funds.

4 16. Defendant WM Funds Distributor, Inc. ("WM Funds Distributor") is a financial
5 services company organized as a Washington corporation, and during the Class Period, acted as the
6 distributor for WAMU and the Proprietary Funds.

7 17. Defendant Edge Asset Management, Inc. ("Edge") is the successor in interest to
8 some or all of the liabilities of WM Advisors complained of herein. Edge is a financial services
9 company organized as a Washington corporation, that at all times material maintained its corporate
10 headquarters at Seattle, Washington.

11 18. Defendant Principal Financial Group, Inc., ("Principal") is a financial services
12 company organized as a Delaware corporation, that at all times material maintained its corporate
13 headquarters at Des Moines, Iowa. As of January 2007, Principal acquired and became the parent
14 company of the Proprietary Funds, now merged into Principal Investors Fund, Inc.

15 19. Defendant Principal Investors Fund, Inc. ("Principal Fund") is the successor in
16 interest to the Proprietary Funds. Principal Funds is a management investment company organized
17 as a Maryland corporation, that at all times material maintained its corporate headquarters at Des
18 Moines, Iowa.

19 20. Defendant Principal Funds Distributor, Inc. ("Principal Funds Distributor") is the
20 successor in interest to some or all of the liabilities of WM Funds Distributor complained of herein.
21 Principal Funds Distributor is organized as a Washington corporation, with its principal place of
22 business in Sacramento county California.

23 21. The defendants listed in paragraphs 11-16 above, are collectively referred to herein
24 as "WAMU".

25 22. The defendants listed in paragraphs 10-20 above are collectively referred to as
26 "Defendants".

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SUBSTANTIVE ALLEGATIONS

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2 23. Of late, mutual fund issuers have been under increased scrutiny for violations of
3 various securities laws. Linda Chatman Thomsen, Deputy Director of the SEC's Division of
4 Enforcement, said recently that "undisclosed receipt of revenue sharing payments from a select group
5 of mutual fund families create[s] a conflict of interest. When customers purchase mutual funds, they
6 should be told about the *full nature and extent* of any conflict of interest that may affect the
7 transaction." (*emphasis added*) SEC Press Release, Edward Jones to Pay \$75 Million to Settle
8 Revenue Sharing Charges, at <http://www.sec.gov/news/press/2004-177.htm>.

9 24. During the Class Period, WAMU channeled secret cash and non-cash incentives
10 to its retail brokerage arm, WMFS and its "Investment Professionals" (hereinafter referred to as
11 "Salesmen"), for the purpose of driving sales of the Proprietary Funds to plaintiff, the Class, and
12 other retail investors, to the exclusion of other investments that did not participate in WMFS'
13 "preferred list", revenue sharing and kickback incentive schemes.

14 25. The SEC has recognized that partial or non-disclosure of incentive arrangements
15 for the sale of mutual funds create conflicts of interest and violate the anti-fraud provisions of the
16 federal securities laws. *See Confirmation Requirements and Point of Sale Disclosure Requirements*
17 *for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement*
18 *Amendments, and Amendments to the Registration Form for Mutual Funds, 69 Fed.Reg. 6438, at*
19 *6440 (Feb. 10, 2004).*

20 26. While promoting the Proprietary Funds to plaintiff and the Class, WMFS
21 represented them as being better than other funds available. WMFS clients were led to believe that
22 WMFS Salesmen were recommending the Proprietary Funds based on objective analysis which
23 indicated that such Funds would perform better than offerings from other fund companies.

24 27. WMFS and its Salesmen's evaluation of the Proprietary Funds was neither
25 objective nor performance-based. Instead, unbeknownst to plaintiff and the Class, WAMU blatantly
26 abused its affiliation with WMFS and its Salesmen to gain access to WMFS events, office parties,
27 training and educational meetings and conferences. The Proprietary Funds significantly benefitted:
28 they were placed on a "preferred list" and thereby required less overhead expenditures, while

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1 representatives from the Proprietary Funds, the WM Funds Distributor, and the WM Investment
2 Advisor, were given unrestricted access to branch offices and were invited to corporate training and
3 marketing events. Consequently, representatives from the Proprietary Funds were given increased
4 opportunities to interact with WMFS Salesmen to promote the sale of their mutual funds. The
5 relevant prospectuses failed to disclose the nature and extent of the WAMU entities' access and
6 influence over the sales practices of WMFS and its Salesmen.

7 28. WAMU's illegal practices were particularly heinous given the nature of the clients
8 they defrauded. The typical mutual fund investor is an unmarried, middle-class individual in his or
9 her forties with a median household income of \$55,000. Approximately 98% of mutual fund
10 shareholders say their investments constitute long-term savings and about 77% cite retirement
11 savings as their primary financial goal. David J. Carter, *Mutual Fund Board and Shareholder Action*,
12 3 VILL. J. & INV. MGM'T at 8.

13 29. Plaintiff and each of the Class members purchased shares or other ownership units
14 in the Proprietary Funds pursuant to a registration statement and prospectus. The registration
15 statements and prospectuses pursuant to which plaintiff and the other Class members purchased their
16 shares or other ownership units in the Proprietary Funds are referred to collectively herein as the
17 "Prospectuses."

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Misleading Statements And Omissions

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2 30. In its March 1, 2004 Proprietary Funds Prospectuses, WAMU issued the following
3 materially misleading statements:

4 WM Advisors may make payments, at its expense, to dealers or other financial intermediaries at an
5 annual rate of up to 0.50% of the average daily net assets of shares of the Portfolios. [¶]

6 The Distributor, at its expense, may provide additional compensation to dealers. These payments
7 generally represent a percentage of a qualifying dealer's sales and/or the value of shares of the
8 Portfolios or Funds within a qualifying dealer's client accounts. Such payments may also include
reimbursement for expenses associated with qualifying dealers' conferences, transaction (or "ticket")
charges and general marketing expenses. ... [¶]

9 The Distributor may, from time to time, pay to dealers, in connection with retail sales or the
10 distribution of shares of a Portfolio or Fund, material compensation in the form of promotional
11 material or educational meetings. Salespersons, including representatives of WM Financial Services,
12 Inc. (a subsidiary of Washington Mutual), and any other person entitled to receive any compensation
for selling or servicing Portfolio or Fund shares may receive different compensation with respect to
one particular class of shares over another, and may receive additional compensation or other
incentives for selling Portfolio or Fund shares. (*emphasis added*).

13 31. Prospectuses and their Statements of Additional Information ("SAI"s) are required
14 to disclose all material facts in order to provide investors with information that will assist them in
15 making an informed decision about whether to invest in a mutual fund. The law requires that such
16 disclosures be in straightforward and easy to understand language such that it is readily
17 comprehensible to the average investor.

18 32. Each of the Proprietary Funds Prospectuses and their SAIs issued during the
19 Class Period failed to adequately disclose to plaintiff and the Class material information about the
20 "preferred lists" and the revenue sharing, and kickback incentive programs associated with them.

21 33. The disclosures above lead a reasonable investor to believe that the kickback and
22 incentive programs *may* or *may not* exist, when in truth, the investment adviser and/or distributor
23 had *already* entered into pre-determined, specific, and negotiated arrangements for participation in
24 the "preferred list", revenue sharing, kickbacks and incentives to WMFS and its Salesmen. WAMU
25 had the duty to state *all* facts that were necessary to make its affirmative statements not misleading.

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1 34. Plaintiff and each member of the Class were entitled to and did receive one of the
2 appropriate Prospectuses, each of which failed to disclose the following material facts:

3 (a) WAMU had adopted a policy to incent WMFS and its Salesmen to aggressively push
4 in-house mutual funds on unsuspecting investors;

5 (b) pursuant to that policy, WMFS and its Salesmen in fact received valuable hidden cash
6 and non-cash compensation for foisting the Proprietary Funds on investors;

7 (c) the cash and non-cash compensation received by WMFS and its Salesmen created
8 incentives to push shares or other ownership units of the Proprietary Funds to the exclusion of other
9 investment alternatives;

10 (d) WMFS had placed the Proprietary Funds on a "preferred list" of funds;

11 (e) the commissions paid to Salesmen to push sales of the Proprietary Funds are higher than
12 commissions for comparable non-proprietary investment devices;

13 (f) the only investment advantage associated with Proprietary Funds relative to other
14 investments was almost always an advantage to WAMU, all at the expense of plaintiff and the Class;

15 (g) the cash and non-cash compensation described herein created insurmountable conflicts
16 of interest between WMFS, its Salesmen and plaintiff and the Class; and

17 (h) pursuant to the unlawful policies and practices described herein, defendants benefitted
18 financially at the expense of the WAMU investors.

19 35. Plaintiff is certain that, upon opportunity for discovery, testimony from WAMU
20 Salesmen will reveal systematic inducements and rigid requirements that Salesmen neglect their
21 duties to clients, and instead sell proprietary products laden with excessive and improper fees,
22 commissions and other incentives.

23 **Scienter Allegations**

24 36. As alleged herein, WAMU acted with scienter in that WAMU knew that the public
25 documents and statements issued or disseminated in the name of the Proprietary Funds were
26 materially false and misleading, knew that such statements and documents would be issued or
27 disseminated to the investing public, and knowingly and substantially participated or acquiesced in
28 the issuance or dissemination of such statements and documents as primary violations of the federal

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1 securities laws. As set forth herein in detail, WAMU, by virtue of their possession of information
2 reflecting the true facts regarding the Proprietary Funds, their control over, and/or receipt and/or
3 modification of Proprietary Funds' materially misleading statements and/or their associations with
4 the Proprietary Funds which made them privy to confidential information concerning the Proprietary
5 Funds, culpably participated in the fraudulent course of conduct alleged herein.

6 37. The fact that WAMU has the incentive programs in place indicates that WAMU
7 believes these programs drive sales. WAMU's directors knew about the already in place
8 arrangements but left in place watered-down disclosures. In light of this conscious strategy, the
9 failure to disclose the full extent of the "preferred list", revenue-sharing, kickback and incentive
10 programs raises a strong inference of scienter.

11 38. WAMU knew that its policies and conduct regarding Proprietary Fund sales was
12 wrong and improper. It later disclosed its actions and policy only after the illegal activities and
13 scandals in the mutual fund industry were finally revealed to the public. WAMU took these actions
14 in a transparent and belated attempt to shield itself from liability.

15 39. While the Private Securities Litigation Reform Act ("PSLRA") (15 U.S.C. § 78)
16 establishes a safe harbor to protect individuals and companies giving investment advice, the safe
17 harbor does not apply here. The safe harbor provision does not apply where defendants, as here,
18 knew at the time they were issuing statements that the statements contained false and misleading
19 information and thus lacked any reasonable basis for making them.

20 **Damages Allegations**

21 40. A mutual fund company is very different from a traditional corporation, in that a
22 mutual fund is a mere shell, a pool of assets consisting mostly of portfolio securities that belongs to
23 the individual investors holding shares in the fund. The management of this asset pool is largely in
24 the hands of an investment advisor, an independent entity which generally organizes the fund and
25 provides it with investment advice, management services, office space and staff.

26 41. Unlike a traditional corporation, if those in charge of a mutual fund engage in
27 wrongful activities negatively impacting the mutual fund, investors are directly impacted because
28 a mutual fund is nothing more than a collection of the investors' money. When a cost is imposed

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1 on a traditional corporation, that cost impacts the net asset value (“NAV”) of the corporation, but
2 it does not necessarily impact the market price of the corporation’s shares. Thus, there is no direct
3 impact of those costs on the shareholder. In contrast, costs imposed on a mutual fund directly reduce
4 the price at which the fund’s shares are bought and sold, and do directly and immediately impact
5 fund shareholders.

6 42. In addition, mutual fund shares do not trade at a price set by the public market.
7 Rather, they are bought from the fund and sold back to the fund at NAV of the fund per share.
8 Opened ended mutual funds such as WAMU’s Proprietary Funds are required to issue redeemable
9 securities, which are defined as “any security... under the terms of which the holder, upon its
10 presentation to the issuer... is entitled... to receive approximately his proportionate share of the
11 issuer’s current net assets, or the cash equivalent thereof.” 15 U.S.C. § 80a-2(a)(32). The value of
12 an investor’s mutual fund is determined by subtracting a fund’s liabilities from its assets to arrive
13 at the fund’s NAV. The undisclosed fees and charges at issue here immediately reduced that
14 Proprietary Funds’ NAV per share, decreasing the amount at which plaintiff and the Class are
15 entitled to redeem their shares.

16 43. As a result of WAMU’s conduct alleged above, plaintiff and the Class have
17 suffered damages. The damages suffered by plaintiff and the Class were a foreseeable consequence
18 of WAMU’s misleading statements, omissions and misconduct, particularly in light of the fact that
19 net returns for the Proprietary Funds were diminished as a result of the undisclosed and improper
20 kickbacks and incentives WMFS and its Salesmen took therefrom. Plaintiff and the Class would not
21 have purchased the Proprietary Funds, and paid the related commissions and fees associated with
22 the Proprietary Funds, had they known of the illegal and improper practices WAMU used to direct
23 them into the Proprietary Funds as alleged above. By investing in the Proprietary Funds, plaintiff and
24 the Class received a return on their investment that was substantially less than the return on
25 investment they would have received had they invested the same dollars in a comparable fund or
26 other investment. Alternatively, investors could have invested fewer dollars in non-Proprietary
27 Funds to obtain a rate of return equal to or greater than that obtained at a higher price from the
28 comparable Proprietary Fund.

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1 47. The members of the Class are so numerous that joinder of all members is
2 impracticable. While the exact number of Class members is unknown to plaintiff at this time and
3 can only be ascertained through appropriate discovery, plaintiff believes that there are thousands of
4 members in the proposed Class. Record owners and other members of the Class may be identified
5 from records maintained by Defendants, and may be notified of the pendency of this action by mail,
6 using the form of notice similar to that customarily used in securities class actions.

7 48. Plaintiff's claims are typical of the claims of the members of the Class as all
8 members of the Class are similarly affected by Defendants' wrongful conduct complained of herein
9 in violation of federal law. Plaintiff does not have interests adverse to the Class.

10 49. Plaintiff will fairly and adequately protect the interests of the members of the Class
11 and has retained counsel competent and experienced in class action and securities litigation.

12 50. Common questions of law and fact exist as to all members of the Class and
13 predominate over any questions wholly affecting individual members of the Class. Among the
14 questions of law and fact common to the Class are:

- 15 (a) whether statements made by Defendants to the investing public during the Class
16 period misstated, omitted or concealed material facts;
- 17 (b) whether the federal securities laws were violated by Defendants' acts as alleged
18 herein; and
- 19 (c) to what extent the members of the Class have sustained damages and the proper
20 measure of damages.

21 51. A class action is superior to all other available methods for the fair and efficient
22 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
23 damages suffered by individual Class members may be relatively small, the expense and burden of
24 individual litigation make it virtually impossible for members of the Class to individually redress
25 the wrongs done to them. There will be no difficulty in the management of this action as a class
26 action.

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1 52. Defendants have acted on grounds generally applicable to the entire Class with
2 respect to the matters complained of herein, thereby making appropriate the relief sought herein with
3 respect to the Class as a whole.

4 **COUNT I**

5 **Against WAMU For Violations Of Section 11 Of The Securities Act**

6 53. Plaintiff repeats and re-alleges each and every allegation contained above as if
7 fully set forth herein, except that for purposes of this claim, plaintiff expressly excludes and
8 disclaims any allegation that could be construed as alleging fraud or intentional or reckless
9 misconduct.

10 54. This claim is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. § 77k,
11 against WAMU on behalf of the Class.

12 55. WAMU were the registrant, or the successor in interest to the registrant, for one
13 or more of their respective Proprietary Fund shares sold to plaintiff and the Class. WAMU issued,
14 caused to be issued and participated in the issuance of the materially false and misleading written
15 statements and/or omissions of material fact that were contained in the respective Prospectuses and
16 is statutorily liable under Section 11.

17 56. Prior to purchasing ownership units of the Proprietary Funds plaintiff was provided
18 the appropriate Prospectuses and, similarly, prior to purchasing the ownership units of each of the
19 other Proprietary Funds, all Class members likewise received the appropriate Prospectuses. Plaintiff
20 and other Class members purchased shares of the Proprietary Funds traceable to the false and
21 misleading Prospectuses.

22 57. As set forth above, the statements contained in the Prospectuses were materially
23 false and misleading for a number of reasons, including that they failed to disclose, and actively
24 concealed, that it was the practice of WAMU to reward WMFS and its Salesman for selling in house
25 funds, while discouraging selling products offered by competitors not on the "preferred list" or
26 otherwise participating in the revenue-sharing, kickback and incentive programs described herein.
27 The Prospectuses failed to disclose and misrepresented material and adverse facts as described in
28 paragraph 34 of this complaint.

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1 58. Plaintiff and the Class have sustained damages as a result of WAMU's violations.

2 59. At the time they purchased the Proprietary Funds shares traceable to the defective
3 Prospectuses, plaintiff and the Class were without knowledge of the facts concerning the false and
4 misleading statements or omissions alleged herein and could not reasonably have possessed such
5 knowledge.

6 60. This claim was brought within the applicable statute of limitations.

7 **COUNT II**

8 **Against WAMU For Violations of Section 12(a)(2) Of The Securities Act**

9 61. Plaintiff repeats and re-alleges each and every allegation contained above as if
10 fully set forth herein, except that for purposes of this claim, plaintiff expressly excludes and
11 disclaims any allegation that could be construed as alleging fraud or intentional or reckless
12 misconduct.

13 62. This claim is brought pursuant to Section 12(a)(2) of the Securities Act, 15 U.S.C.
14 § 771(a)(2), against WAMU for their failure to disclose sales practices that created insurmountable
15 conflicts of interest.

16 63. WAMU were the seller, or the successor in interest to the seller, within the
17 meaning of the Securities Act, for one or more of their respective fund shares sold to Class members
18 because they either: (a) transfer title to shares of the Proprietary Funds to members of the Class; (b)
19 transfer title to shares of the Proprietary Funds to the Proprietary Funds distributors that in turn sold
20 shares of the Proprietary Funds as agent for WAMU; and/or (c) solicited the purchase of shares in
21 the Proprietary Funds by members of the Class, motivated in part by a desire to serve the financial
22 interests of WAMU to the detriment of plaintiff and the Class.

23 64. During WAMU's sale of the Proprietary Funds to plaintiff and the Class, WAMU
24 failed to disclose the existence of the "preferred list", the revenue sharing, kickbacks and other
25 incentives alleged herein that WMFS and its Salesman received in exchange for pushing WMFS
26 clients into the Proprietary Funds. These incentives created an insurmountable conflict of interest
27 that was never disclosed to investors.

28

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1 65. WAMU also caused to be issued to members of the Class the Prospectuses that
2 failed to disclose that fees, commissions, and other charges from the purchase and maintenance of
3 the Proprietary Funds were used to pay WMFS and its Salesman for directing plaintiff and the Class
4 into the Proprietary Funds, and the existence of the conflicts of interest described herein for WMFS
5 and its Salesmen.

6 66. As set forth above, when they became effective, the Proprietary Funds'
7 Prospectuses were misleading as the omitted or insufficiently disclosed the material facts alleged in
8 paragraph 34 of this complaint.

9 67. Plaintiff and the other members of the Class have sustained damages as a result
10 of WAMU's violations.

11 68. At the time they purchased the Proprietary Fund shares traceable to the defective
12 Prospectuses, plaintiff and the Class were without knowledge of the facts concerning the material
13 misleading statements and omissions alleged herein and could not reasonably have possessed such
14 knowledge.

15 69. This claim was brought within the applicable statute of limitations.

16 **COUNT III**

17 **Against Washington Mutual for Violation of Section 15 of the Securities Act**

18 70. Plaintiff repeats and re-alleges each and every allegation contained above as if
19 fully set forth herein, except that for purposes of this claim, plaintiff expressly excludes and
20 disclaims any allegation that could be construed as alleging fraud or intentional or reckless
21 misconduct.

22 71. This claim is brought pursuant to Section 15 of the Securities Act, 15 U.S.C. §
23 77o, against Washington Mutual as a control person of WAMU. It is appropriate to treat these
24 defendants as a group for pleading purposes and presume that the false, misleading, and incomplete
25 information complained about herein are the collective actions of Washington Mutual and WAMU.

26 72. WAMU violated Sections 11 and 12(a) of the Securities Act by their acts and
27 omissions as alleged in this complaint. By virtue of its position as a controlling person, Washington
28 Mutual is liable pursuant to Section 15 of the Securities Act, 15 U.S.C. § 77o.

ZAPIEN v. WASHINGTON MUTUAL, INC. et. al.

1 78. WAMU (i) employed devices, schemes, and artifices to defraud; (ii) made untrue
2 or misleading statements of material fact and/or omitted to state material facts necessary to make the
3 statements not misleading; and (iii) engaged in acts, practices, and a course of conduct which
4 operated as a fraud and deceit upon purchasers of the Proprietary Funds, including plaintiff and the
5 Class, in an effort to enrich themselves through undisclosed manipulative tactics by which they
6 wrongly distorted the pricing of their securities in violation of Section 10(b) of the Exchange Act
7 and Rule 10b-5. The WAMU entities are sued as primary participants of the wrongful and illegal
8 conduct and scheme charged herein.

9 79. The WAMU entities, individually and in concert, directly and indirectly, by the
10 use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated
11 in a continuous course of conduct to conceal the adverse material information about the improper
12 “preferred list”, revenue sharing, kickbacks and other incentives and the inherent conflicts of interest
13 alleged herein.

14 80. WAMU employed devices and artifices to defraud and engaged in a course of
15 conduct and scheme as alleged herein to unlawfully manipulate and profit from increased sales
16 and/or commissions, fees or other charges paid to them as a result of its undisclosed “preferred list”,
17 kickback and incentive arrangements described above and thereby engaged in transactions, practices
18 and a course of conduct which operated as a fraud and deceit upon plaintiff and the Class.

19 81. WAMU had actual knowledge of the misrepresentations and omissions of material
20 facts set forth above, or acted with reckless disregard for the truth in that they failed to ascertain and
21 to disclose such facts, even though the facts were available to them. WAMU’s material misleading
22 statements and omissions were done knowingly or recklessly and for the purpose and effect of
23 concealing the truth.

24 82. As a result of dissemination of the materially false and misleading information and
25 failure to disclose material facts, as set forth in paragraph 34 above, the prices for the Proprietary
26 Funds were distorted during the Class Period such that they did not reflect the risks and costs of the
27 continuing course of conduct alleged above. In ignorance of the fact that prices of the shares were
28 distorted, and relying directly or indirectly on the false and misleading statements made by WAMU,

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1 or upon the integrity of WAMU, and/or on the absence of material adverse information that was
2 known to or recklessly disregarded by WAMU but not disclosed in public statements by WAMU
3 during the Class Period, plaintiff and the Class acquired their shares or interests in the Proprietary
4 Funds during the Class Period at distorted prices and were damaged thereby.

5 83. By virtue of the foregoing, WAMU have violated Section 10(b) of the Exchange
6 Act and Rule 10b-5 promulgated thereunder.

7 84. As a direct and proximate result of WAMU's wrongful conduct, plaintiff and the
8 Class suffered damages in connection with their respective purchases and sales of the Proprietary
9 Funds shares during the Class Period.

10 85. This claim was brought within the applicable statute of limitations.

11 **COUNT V**

12 **Violation Of Section 10(b) Of The Exchange Act And Rule 10b-10 Promulgated**
13 **Thereunder Against WAMU**

14 86. Plaintiff repeats and re-alleges each and every allegation contained above as if
15 fully set forth herein, explicitly excepting and disclaiming claims brought pursuant to the Securities
16 Act.

17 87. During the Class Period, WMFS and its Salesmen effected transactions in the
18 Proprietary Funds for or with the account of plaintiff and the Class, and/or induced plaintiff and the
19 Class to purchase the Proprietary Funds.

20 88. At or before completion of Class members' purchases of the Proprietary Funds,
21 WMFS failed to disclose the source and amount of remuneration WMFS and its Salesmen received
22 from WAMU in connection with Class members' purchases of the Proprietary Funds, as required
23 by Rule 10b-10, promulgated under Section 10(b) of the Exchange Act.

24 89. WAMU's payment of such remuneration created insurmountable and undisclosed
25 conflicts of interest. Class members were thus ignorant of the source and amount of remuneration
26 WMFS and its Salesman received from WAMU and of the resulting conflicts of interest therein.
27 Had plaintiff and the Class known of the source and amount of such remuneration and the resulting
28 conflicts of interest, they would not have held, purchased or otherwise acquired shares of the

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1 Proprietary Funds, would not have paid any commissions or fees paid as a result of the acquisitions
2 of the Proprietary Funds, and would not have paid the fees or costs associated with ownership of the
3 Proprietary Funds, or if they had, they would not have held, purchased or otherwise acquired them
4 at the artificial prices paid.

5 90. As a direct and proximate result of Defendants' violations of Rule 10b-10, plaintiff
6 and the Class suffered damages in connection with their respective purchases and sales of the
7 Proprietary Funds shares during the Class Period.

8 91. At the time they purchased or held the Proprietary Funds shares traceable to the
9 defective disclosures, Class members were without knowledge of the facts concerning the material
10 omissions alleged herein and could not reasonably have possessed such knowledge.

11 92. This claim was brought with them the applicable statute of limitations.

12 **COUNT IV**

13 **Against Washington Mutual for Violations of Section 20(a) of the Exchange Act**

14 93. Plaintiff repeats and re-alleges each and every allegation contained above as if
15 fully set forth herein, explicitly excepting and disclaiming claims brought pursuant to the Securities
16 Act.

17 94. This claim is brought pursuant to Section 20 of the Exchange Act, 15 U.S.C. § 78t,
18 against Washington Mutual as a control person of WAMU. It is appropriate to treat these defendants
19 as a group for pleading purposes and presume that the false, misleading, and incomplete information
20 complained about herein are the collective actions of Washington Mutual and WAMU.

21 95. WAMU violated Section 10(b) and Rules 10b-5 and 10b-10 by their acts, material
22 misleading statements and omissions as alleged in this complaint. By virtue of its position as a
23 controlling person, Washington Mutual is liable pursuant to Section 20(a) of the Exchange Act.

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1 96. Washington Mutual was a “control person” of WAMU within the meaning of
2 Section 20 of the Exchange Act, by virtue of its position of operational control and/or ownership.
3 At the time that WAMU sold one or more shares of the Proprietary Funds to plaintiff and the Class
4 – by virtue of their positions of control and authority over WAMU – Washington Mutual, directly
5 and indirectly, had the power, authority, influence and control, and exercised same, over the decision
6 making and actions of WAMU to engage in the wrongful conduct complained of herein. Washington
7 Mutual had the ability to prevent the issuance of the statements alleged to be false and misleading
8 or could have caused such statements to be corrected.

9 97. In particular, Washington Mutual had direct supervisory involvement in the
10 operations of WAMU, and is presumed to have had the power to control or influence the particular
11 acts, misleading statements, and omissions giving rise to violations of the Securities Act as alleged
12 herein, and to have exercised same.

13 98. As a direct and proximate result of Washington Mutual’s wrongful conduct,
14 plaintiff and the Class suffered damages in connection with their purchases and sales of the
15 Proprietary Funds during the Class Period.

JURY TRIAL DEMAND

16
17 99. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff demands
18 a trial by jury of all of the claims asserted in this Complaint so triable.

PRAYER

19
20 WHEREFORE, plaintiff and the Class pray for relief and judgement as follows:

21 1. Judgment declaring that this action is properly maintained as a class action and
22 appointing plaintiff as Lead Plaintiff and their counsel as Lead Counsel for the Class and certifying
23 them as Class representatives under Rule 23 of the Federal Rules of Civil Procedure;

24 2. Awarding compensatory damages in favor of plaintiff and the Class against all
25 Defendants, jointly and severally, for all damages sustained as a result of Defendants’ wrongdoing,
26 in an amount to be proven at trial, including interest thereon;

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ZAPIEN v. WASHINGTON MUTUAL, INC. et al.

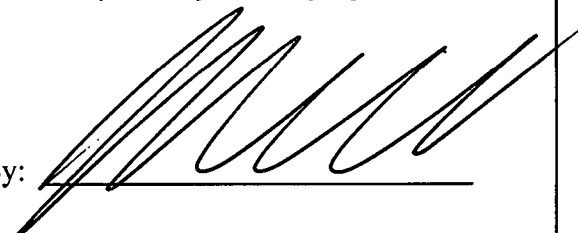
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3. Awarding plaintiff and the Class rescission of their contracts with the Defendants, including recovery of all fees which would otherwise apply and recovery of all fees paid to the Defendants pursuant to such agreements;

4. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

5. Such other and further relief as this Court may deem just and proper.

DATED: 2/28/07

By: 

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Attorneys for Plaintiff
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FILED
 FEB 28 2007
 CLERK, U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 DEPUTY

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Zapien, Luz, M.

DEFENDANTS

Washington Mutual, et al.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
 (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Seattle, Washington
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Jeffrey R. Krinsk, Esq.
 Finkelstein & Krinsk, LLP
 501 W. Broadway, Ste. 1250
 San Diego, CA 92101 (619) 238-1333

ATTORNEYS (IF KNOWN)

07CV 0385 - DMS CAB

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 Federal Question (U.S. Government Not a Party)
- 3 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PT | DEF | | PT | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY). 15 USC Sections 77k, 77l, 77o, 77t,

section 10b of the Securities Exchange Act of 1934 and Rules 10b-5 and 10-b10, 4 misleading statements and omissions

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (13958)	<input checked="" type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 530 General	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
	REAL PROPERTY	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(a))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 555 Prisoner Conditions	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations		<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare				<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights				<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property					

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removal from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.e.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE 2/28/07

SIGNATURE OF ATTORNEY OF RECORD

135527 \$350 ser 3/1/07

UNITED STATES
DISTRICT COURT

Southern District of California
San Diego Division

135527 - A3
March 1, 2007

Code	Case #	Qty	Amount
CV086900	3-07-CV-0385		60.00 CH
	Judge - SABRAM		
CV086400			100.00 CH
CV510000			190.00 CH
Total ->			350.00

FROM: CIVIL FILING
ZAPIEN V. WASHINGTON MUTUAL
ET AL
BCR 7686