

ORIGINAL

1 MARC T. DWORSKY (SBN 157413)
Marc.Dworsky@mto.com
2 ROBERT DELLANGELO (SBN 160409)
Robert.DellAngelo@mto.com
3 MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue, Thirty-Fifth Floor
4 Los Angeles, CA 90071-1560
Telephone: (213) 683-9100
5 Facsimile: (213) 687-3702

6 Attorneys for Defendant
7 WACHOVIA CORPORATION, ET AL.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 ARLETTE MILLER, on Behalf of Herself
and All Others Similarly Situated,

11
12 Plaintiff,

13 v.

14 WACHOVIA CORPORATION,
15 WACHOVIA CAPITAL TRUST IX, G.
KENNEDY THOMPSON, MARK C.
16 TREATOR, THOMAS J. WURTZ, PETER M.
CARLSON, JOHN D. BAKER II, ROBERT J.
17 BROWN, PETER C. BROWNING, JOHN T.
CASTEEN, III, JEROME A. GITT, WILLIAM
18 H. GOODWIN, JR., MARYELLEN C.
HERRINGER, ROBERT A. INGRAM,
19 DONALD M. JAMES, MACKKEY J.
McDONALD, JOSEPH NEUBAUER,
20 TIMOTHY D. PROCTOR, ERNEST S. RADY,
21 VAN L. RICHEY, RUTH G.
SHAW, LANTY L. SMITH, JOHN C.
22 WHITAKER, JR., DONA DAVIS YOUNG,
WACHOVIA CAPITAL MARKETS, LLC,
23 CITIGROUP GLOBAL MARKETS INC.,
24 MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED, MORGAN
25 STANLEY & CO. INCORPORATED, and
26 UBS SECURITIES LLC,

27 Defendants.
28

FILED
MAR - 6 2009
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MRS NP

CV 09 0998

Case No.

RMW HRL

NOTICE OF REMOVAL

Removed from:

Superior Court of the State of California
County of Alameda

Case No. RG 09431365

7319874.1

1
2 PLEASE TAKE NOTICE that Defendants Wachovia Corporation, Wachovia
3 Capital Trust IX, and Wachovia Capital Markets, LLC (the "Wachovia Defendants") and
4 Defendants G. Kennedy Thompson, Mark C. Treanor, Thomas J. Wurtz, Peter M. Carlson, John
5 D. Baker II, Robert J. Brown, Peter C. Browning, John T. Casteen, III, Jerome A. Gitt, William
6 H. Goodwin, Jr., Maryellen C. Herringer, Robert A. Ingram, Donald M. James, Mackey J.
7 McDonald, Joseph Neubauer, Timothy D. Proctor, Ernest S. Rady, Van L. Richey, Ruth G.
8 Shaw, Lanty L. Smith, John C. Whitaker, Jr., and Dona Davis Young (the "Individual
9 Defendants") (collectively, the "Removing Defendants"), by and through their undersigned
10 attorneys, hereby remove the entire above-captioned action, and all claims and causes of action
11 therein, from the Superior Court of the State of California, County of Alameda, to the United
12 States District Court for the Northern District of California, pursuant to (i) 28 U.S.C. §§ 1441,
13 1446, and 15 U.S.C. § 77p(c); and (ii) in the alternative, 28 U.S.C. § 1332(d). The Removing
14 Defendants appear for the purpose of removal only and for no other purpose, reserve all defenses
15 and rights available to them, and state as follows:

16 1. Plaintiff filed the above-captioned putative class action on or about
17 January 16, 2009 in the Superior Court of the State of California, County of Alameda, under
18 Case Number RG 09431365 (the "State Court Action"). Pursuant to 28 U.S.C. § 1446(a), a copy
19 of the Summons and Complaint filed in the State Court Action (the "Complaint" or "Compl.") is
20 attached hereto as Exhibit A.

21 2. Plaintiff's service of the Summons and Complaint upon the Wachovia
22 Defendants was effected on February 11, 2009.

23 3. Pursuant to 28 U.S.C. § 1446(b), the Wachovia Defendants are timely
24 filing this Notice of Removal within thirty (30) days of service of the Summons and Complaint.
25 See *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999) (holding that
26 time for removal does not begin to run prior to service of process); *Luchetti v. Hershey Co.*, No.
27
28

7319874.1

1 08-1629, 2008 WL 2331965, at *3 (N.D. Cal. June 4, 2008) (finding formal service of process “a
2 prerequisite for triggering the 30-day removal period”).

3
4 4. This action is within the original jurisdiction of this Court under 28 U.S.C.
5 § 1331 and 15 U.S.C. § 77v(a) because it purports to assert federal claims arising under the
6 Securities Act of 1933 (the “Securities Act”). In particular, Plaintiff purports to assert claims
7 against all Defendants under Sections 11 and 12(a)(2) of the Securities Act. Plaintiff also
8 purports to assert claims against the Individual Defendants under Section 15 of the Securities
9 Act. See 15 U.S.C. §§ 77k, 77l(a)(2), and 77o.

10
11 5. This action is removable under 28 U.S.C. § 1441(a) of the Securities
12 Litigation Uniform Standards Act of 1998 (“SLUSA”), Pub. L. No. 105-353, 112 Stat. 3227
13 (1998). Under 28 U.S.C. § 1441(a), “[e]xcept as otherwise expressly provided by Act of
14 Congress, any civil action brought in a State court of which the district courts of the United
15 States have original jurisdiction, may be removed . . . to the district court of the United States . . .
16 embracing the place where such action is pending.”

17
18 6. SLUSA amended the Securities Act to create an exception to the
19 Securities Act’s non-removal provision. As amended by SLUSA, Section 22(a) of the Securities
20 Act provides that “[e]xcept as provided in [Section 16(c) of the Securities Act], no case arising
21 under this subchapter and brought in any State court of competent jurisdiction shall be removed
22 to any court of the United States.” 15 U.S.C. § 77v(a) (emphasis added). As alleged in the
23 Complaint, this case arises “under this subchapter,” namely the Securities Act. See, e.g., Compl.
24 ¶¶ 62, 73, 75. Section 16(c) of the Securities Act provides that “[a]ny covered class action
25 brought in any State court involving a covered security, as set forth in subsection (b), shall be
26 removable to the Federal district court for the district in which the action is pending” 15
27
28

7319874.1

1 U.S.C. § 77p(e).¹ Section 16(b) refers to covered class actions alleging “an untrue statement or
2 omission of material fact in connection with the purchase or sale of a covered security” or “that
3 the defendant used or employed any manipulative or deceptive device or contrivance in
4 connection with the purchase or sale of a covered security.” 15 U.S.C. § 77p(b). As alleged in
5 the Complaint and as set forth below, this action is a covered class action alleging untrue
6 statements or omissions of material fact in connection with the purchase or sale of a covered
7 security. *See, e.g.*, Compl. ¶ 3, 63

9
10 7. This action is a “covered class action” within the meaning of 15 U.S.C.
11 § 77p(f)(2)(A) because (i) Plaintiff is seeking the recovery of damages on behalf of herself and a
12 prospective class of other allegedly similarly situated purchasers of 6.375% Trust Preferred
13 Securities (the “Securities”) and Plaintiff alleges that questions of law or fact common to the
14 members of the prospective class predominate over any questions affecting only individual
15 persons or members, and (ii) damages are sought on behalf of more than 50 persons or
16 prospective class members and Plaintiff alleges that questions of law or fact common to those
17 persons or members of the prospective class, without reference to issues of individualized
18 reliance on an alleged misstatement or omission, predominate over any questions affecting only
19 individual persons or members. *See* Compl. ¶¶ 41-43, 45.

21 8. This action involves a “covered security” because, as alleged in the
22 Complaint, the Securities were publicly offered and listed on the New York Stock Exchange. 15
23 U.S.C. § 77p(f)(3); 15 U.S.C. § 77r(b)(1)(A); *See, e.g.*, Compl. ¶ 50, 60.

25
26 1 Removal to this Court is based upon the allegations of the Complaint. The Removing
27 Defendants do not concede, and expressly preserve, all rights and objections with respect
28 to the allegations that this action properly has been brought, or may be prosecuted as, a
class action.

7319874.1

1 9. Accordingly, Plaintiff's claims are removable to this Court under 28
2 U.S.C. § 1441 and 15 U.S.C. §§ 77p(c) and 77v.

3
4 10. Alternatively, if Plaintiff asserts that this action is not a "covered class
5 action" or does not involve a "covered security," this action is removable under the Class Action
6 Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2 (2005), codified at 28 U.S.C. §§ 1332(d) and
7 1453. Pursuant to 28 U.S.C. § 1332(d), as amended by CAFA, a putative class action
8 commenced after February 18, 2005 may be removed to the appropriate federal district court if:
9 (i) any member of the putative class is a citizen of a state different from any defendant; (ii) the
10 putative class action consists of at least 100 putative class members; and (iii) the amount in
11 controversy exceeds the sum or value of \$5,000,000.00, exclusive of interest and costs. See 28
12 U.S.C. §§ 1332(d) and 1453.

13
14 11. This action was commenced after the effective date of CAFA and is a
15 class action in which at least one member of the putative class of Plaintiff is a citizen of a state
16 different from a Defendant. 28 U.S.C. § 1332(d)(2)(A). During all relevant times:
17 (1) Defendant Wachovia Corporation was a financial holding company and bank holding
18 company incorporated under North Carolina law with its principal place of business in North
19 Carolina; (2) Defendant Wachovia Capital Trust IX was a statutory trust formed under Delaware
20 law with its principal place of business in North Carolina; and (3) Defendant Wachovia Capital
21 Markets, LLC, was a Delaware limited liability company with its principal place of business in
22 North Carolina. Defendant Citigroup Global Markets Inc. is a New York corporation with its
23 principal place of business in New York. Defendant Merrill Lynch, Pierce, Fenner & Smith
24 Incorporated is a Delaware corporation with its principal place of business in New York.
25 Defendant Morgan Stanley & Co. Incorporated is a Delaware corporation with its principal place
26
27
28

7319874.1

1 of business in New York. Defendant UBS Securities LLC, is a Delaware limited liability
2 company with its principal place of business in Connecticut. Upon information and belief,
3 Plaintiff is a citizen of California. *See* Compl. ¶ 7. Accordingly, at least one member of the
4 proposed class is a citizen of a state different from at least one Defendant and the minimal
5 diversity requirements of CAFA are therefore satisfied. *See* 28 U.S.C. § 1332(d)(2)(A).
6

7 12. Moreover, this action is removable under CAFA even if certain
8 Defendants were citizens of California, the state in which the action was brought. *See* 28 U.S.C.
9 § 1453(b) (“a class action may be removed . . . without regard to whether any defendant is a
10 citizen of the State in which the action is brought”).
11

12 13. CAFA requires that “the number of members of all proposed plaintiff
13 classes in the aggregate” be at least 100. 28 U.S.C. § 1332(d)(5)(B). Plaintiff alleges that “there
14 are hundreds of members in the proposed Class.” Compl. ¶ 42. Accordingly, based upon the
15 allegations in the Complaint, the requirement that the number of members in the putative class be
16 100 or more is satisfied. *See* 28 U.S.C. § 1332(d)(5)(B).
17

18 14. In addition, upon information and belief, the amount in controversy
19 exceeds \$5,000,000.00, exclusive of interest and costs. Under 28 U.S.C. § 1332(d), as amended
20 by CAFA, the amount in controversy in a putative class action is determined by aggregating the
21 claims of all members. 28 U.S.C. § 1332(d)(6). Here, the Complaint alleges that misstatements
22 and omissions of material fact were made in connection with the public sale of 30,000,000 of the
23 Securities for proceeds of approximately \$750,000,000.00 and that the value of the Securities has
24 declined due to Defendants’ alleged violations. *See, e.g.*, Compl. ¶ 3-4. Plaintiff further alleges
25 that the Securities were issued for \$25.00 per security and that the prices of the Securities
26 dropped to “nearly \$20” per security following the announcements on which Plaintiff purports to
27
28

7319874.1

1 base her claims. *See* Compl. ¶ 60. These allegations suffice to meet CAFA's amount in
2 controversy requirement.

3
4 15. To the extent any portion of Plaintiff's claims may not be subject to
5 SLUSA or CAFA, this Court has supplemental jurisdiction over those additional claims pursuant
6 to 28 U.S.C. § 1367.

7
8 16. All Defendants who have been properly served concur in the removal of
9 this action to this Court, subject to and without waiving any defenses and rights available to
10 them. Unserved Defendants are not required to consent to the Notice of Removal. *See Salveson*
11 *v. Western States Bankcard Ass'n*, 731 F.2d 1423, 1429 (9th Cir. 1984) (holding that "a party not
12 served need not be joined [in the removal notice]; the defendants summonsed can remove by
13 themselves").

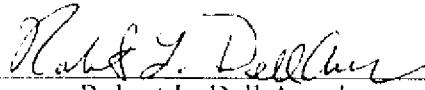
14
15 17. In accordance with 28 U.S.C. § 1446(d), the Removing Defendants will
16 promptly serve a copy of this Notice of Removal on counsel for Plaintiff and will file a copy of
17 this Notice of Removal with the Clerk of the Superior Court of the State of California, County of
18 Alameda.

19
20 WHEREFORE, Defendants Wachovia Corporation, Wachovia Capital Trust IX,
21 Wachovia Capital Markets, LLC, G. Kennedy Thompson, Mark C. Treanor, Thomas J. Wurtz,
22 Peter M. Carlson, John D. Baker II, Robert J. Brown, Peter C. Browning, John T. Casteen, III,
23 Jerome A. Gitt, William H. Goodwin, Jr., Maryellen C. Herringer, Robert A. Ingram, Donald M.
24 James, Mackey J. McDonald, Joseph Neubauer, Timothy D. Proctor, Ernest S. Rady, Van L.
25 Richey, Ruth G. Shaw, Lanty L. Smith, John C. Whitaker, Jr., and Dona Davis Young, hereby
26 remove this action from the Superior Court of the State of California, County of Alameda, to the
27 United States District Court for the Northern District of California.

28
7319874.1

1 DATED: March 6, 2009

MUNGER, TOLLES & OLSON LLP

2
3 By: 
4 Robert L. Dell Angelo

5 Attorneys for Defendant
6 WACHOVIA CORPORATION, ET AL.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7319874.1



**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
WACHOVIA CORPORATION,

[Additional Parties Attachment Form is Attached]

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
ARLETTE MILLER, on Behalf of Herself and All Others Similarly
Situatid

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
ALAMEDA COUNTY

JAN 16 2009

CLERK OF THE SUPERIOR COURT

By Susan Crickam Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

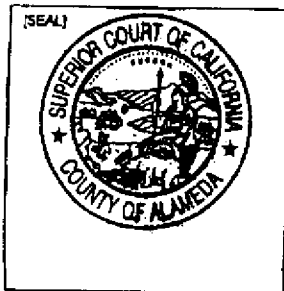
The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of Alameda
1225 Fallon Street
Oakland, CA 94612-4293

CASE NUMBER
(Número del Caso) **CG 09 431365**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Lionel Z. Glancy (#134180) (310) 201-9150 [tel]; (310) 201-9160 [fax]
Glancy Binkow & Goldberg LLP 1801 Avenue of the Stars, #311 Los Angeles, CA 90067

DATE: **JAN 16 2009** PAT SWEETEN Clerk by Susan Crickam Deputy
(Fecha) EXECUTIVE OFFICER/CLERK (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

FAXED

SHORT TITLE: ARLETTE MILLER V. WACHOVIA CORPORATION, ET AL.	SUM-200(A) CASE NUMBER:
---	---------------------------------------

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

WACHOVIA CORPORATION,
 WACHOVIA CAPITAL TRUST IX,
 G. KENNEDY THOMPSON,
 MARK C. TREANOR,
 THOMAS J. WURTZ,
 PETER M. CARLSON,
 JOHN D. BAKER II,
 ROBERT J. BROWN,
 PETER C. BROWNING,
 JOHN T. CASTEEN, III,
 JEROME A. GITT,
 WILLIAM H. GOODWIN, JR.,
 MARYELLEN C. HERRINGER,
 ROBERT A. INGRAM,
 DONALD M. JAMES,
 MACKEY J. McDONALD,
 JOSEPH NEUBAUER,
 TIMOTHY D. PROCTOR,
 ERNEST S. RADY,
 VAN L. RICHEY,
 RUTH G. SHAW,
 LANTY L. SMITH,
 JOHN C. WHITAKER, JR.,
 DONA DAVIS YOUNG,
 WACHOVIA CAPITAL MARKETS, LLC,
 CITIGROUP GLOBAL MARKETS INC.,
 MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
 MORGAN STANLEY & CO. INCORPORATED,
 UBS SECURITIES LLC



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Lionel Z. Glancy #134180 Glancy Binkow & Goldberg LLP 1801 Avenue of The Stars Suite 311 Los Angeles, CA 90067		FOR COURT USE ONLY FILED ALAMEDA COUNTY JAN 16 2009 CLERK OF THE SUPERIOR COURT By <u>Susan Erickson</u> Deputy
TELEPHONE NO.: 310 301-9150 FAX NO.: 310 201-9160 ATTORNEY FOR (Name): Plaintiff Arlette Miller		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: 1225 Fallon Street CITY AND ZIP CODE: Oakland, CA 94612-4293 BRANCH NAME: Rene C. Davidson Courthouse		
CASE NAME: Arlette Miller vs. Wachovia Corporation, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: RG 09 43 1365 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/IPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/IPD/WD (23) Non-P/IPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/IPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input checked="" type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	--	--

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|---|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input checked="" type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **THREE (3)**
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 16, 2009
LIONEL Z. GLANCY
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

FAXED

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

<p>Auto Tort</p> <ul style="list-style-type: none"> Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto) <p>Other P/VPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <ul style="list-style-type: none"> Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability (not asbestos or toxic/environmental) (24) Medical Malpractice (45) Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other P/VPD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PI/PD/WD <p>Non-P/VPD/WD (Other) Tort</p> <ul style="list-style-type: none"> Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08) Defamation (e.g., slander, libel) (13) Fraud (18) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice (not medical or legal) Other Non-P/VPD/WD Tort (35) <p>Employment</p> <ul style="list-style-type: none"> Wrongful Termination (36) Other Employment (15) 	<p>Contract</p> <ul style="list-style-type: none"> Breach of Contract/Warranty (06) Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence) Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage (not provisionally complex) (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute <p>Real Property</p> <ul style="list-style-type: none"> Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property (not eminent domain, landlord/tenant, or foreclosure) <p>Unlawful Detainer</p> <ul style="list-style-type: none"> Commercial (31) Residential (32) Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential) <p>Judicial Review</p> <ul style="list-style-type: none"> Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals 	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)</p> <ul style="list-style-type: none"> Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims (arising from provisionally complex case type listed above) (41) <p>Enforcement of Judgment</p> <ul style="list-style-type: none"> Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment (non-domestic relations) Sister State Judgment Administrative Agency Award (not unpaid taxes) Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case <p>Miscellaneous Civil Complaint</p> <ul style="list-style-type: none"> RICO (27) Other Complaint (not specified above) (42) Declaratory Relief Only Injunctive Relief Only (non-harassment) Mechanics Lien Other Commercial Complaint Case (non-tort/non-complex) Other Civil Complaint (non-tort/non-complex) <p>Miscellaneous Civil Petition</p> <ul style="list-style-type: none"> Partnership and Corporate Governance (21) Other Petition (not specified above) (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition
---	---	--

1 LIONEL Z. GLANCY (#134180)
2 MICHAEL GOLDBERG (#188669)
3 GLANCY BINKOW & GOLDBERG LLP
4 1801 Avenue of the Stars, Suite 311
5 Los Angeles, California 90067
6 Telephone: (310) 201-9150
7 Facsimile: (310) 201-9160
8 info@glancylaw.com

Attorneys for Plaintiff

[Additional counsel appear on signature page.]

ENDORSED
FILED
ALAMEDA COUNTY

JAN 16 2009

CLERK OF THE SUPERIOR COURT
By SUSAN ERICKSON
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

ARLETTE MILLER, on Behalf of Herself and All
Others Similarly Situated,
Plaintiff,

v.

WACHOVIA CORPORATION, WACHOVIA
CAPITAL TRUST IX, G. KENNEDY THOMPSON,
MARK C. TREANOR, THOMAS J. WURTZ,
PETER M. CARLSON, JOHN D. BAKER II,
ROBERT J. BROWN, PETER C. BROWNING,
JOHN T. CASTEEN, III, JEROME A. GITT,
WILLIAM H. GOODWIN, JR., MARYELLEN C.
HERRINGER, ROBERT A. INGRAM, DONALD M.
JAMES, MACKBY J. McDONALD, JOSEPH
NEUBAUER, TIMOTHY D. PROCTOR, ERNEST
S. RADY, VAN L. RICHEY, RUTH G. SHAW,
LANTY L. SMITH, JOHN C. WHITAKER, JR.,
DONA DAVIS YOUNG, WACHOVIA CAPITAL
MARKETS, LLC, CITIGROUP GLOBAL
MARKETS INC., MERRILL LYNCH, PIERCE,
FENNER & SMITH INCORPORATED, MORGAN
STANLEY & CO. INCORPORATED and UBS
SECURITIES LLC,

Defendants.

No. **RG 09 431365**

CLASS ACTION COMPLAINT
FOR VIOLATIONS OF
FEDERAL SECURITIES LAWS

DEMAND FOR JURY TRIAL

FAXED

1 NATURE OF THE ACTION

2 1. This is a securities class action on behalf of all persons who acquired the preferred
3 stock of Wachovia Corporation ("Wachovia" or the "Company") pursuant and/or traceable to a
4 false and misleading registration statement and prospectus (collectively, the "Registration
5 Statement") issued in connection with the Company's May 2007 initial public offering ("IPO")
6 of the Company's 6.375% Trust Preferred Securities (the "Offering"). This action asserts strict
7 liability claims under the Securities Act of 1933 ("1933 Act") against Wachovia, its senior
8 insiders, the Wachovia trust which issued the securities, and the investment banks which
9 underwrote the May 2007 Offering (collectively, "defendants").
10

11
12 2. Defendant Wachovia is registered as a financial holding company and a bank
13 holding company, and provides commercial and retail banking and trust services through full-
14 service banking offices. Wachovia is headquartered in Charlotte, North Carolina and has branch
15 offices in the United States and around the globe.
16

17 3. Defendants consummated Wachovia's Offering pursuant to the false and
18 misleading Registration Statement and Prospectus, selling 30 million shares at \$25 per share, for
19 proceeds of approximately \$750 million.

20 4. Wachovia ultimately announced huge charges associated with its mortgage
21 portfolio, causing the price of Wachovia's common stock and the preferred securities issued in
22 the Offering to decline.
23

24 5. The true facts which were omitted from the Registration Statement were:

25 (a) Defendants' portfolio of collateralized debt obligations ("CDOs") contained
26 billions of dollars worth of impaired and risky securities, many of which were backed by subprime
27 mortgage loans;
28

1 (b) Defendants failed to properly account for highly leveraged loans such as
2 mortgage securities; and

3 (c) Wachovia had been heavily involved in mortgages involving the pay-option
4 adjustable rate mortgages ("ARMs"). These pay-option ARMs provided that during the initial term
5 of the loan borrowers could pay only as much as they desired with any underpayment being added
6 to the loan balance. These loans would become toxic (for both Wachovia and the borrowers) once
7 house prices stopped increasing at a rapid rate.
8

9
10 **JURISDICTION AND VENUE**

11 6. The claims alleged herein arise under §§11, 12(a)(2) and 15 of the 1933 Act, 15
12 U.S.C. §§77k, 77l(a)(2) and 77o. Jurisdiction is conferred by §22 of the 1933 Act and venue is
13 proper pursuant to §22 of the 1933 Act. Section 22 of the 1933 Act explicitly states that "[e]xcept
14 as provided in section 16(c), no case arising under this title and brought *in any State court* of
15 competent jurisdiction shall be removed to any court in the United States." Section 16(c) refers to
16 "covered class actions," which are defined as lawsuits brought as class actions or brought on behalf
17 of more than 50 persons asserting claims *under state or common law*. This is an action asserting
18 federal law claims. Thus, it does not fall within the definition of a "covered class action" under
19 §16(b)-(c) and therefore is not removable to federal court under the Securities Litigation Uniform
20 Standards Act of 1998.
21

22 7. The violations of law complained of herein occurred in this County, including the
23 preparation and dissemination of the materially false and misleading Registration Statement
24 complained of herein, which statements were disseminated into this County. Wachovia and each
25 of the underwriter defendants conduct business in this County. Plaintiff resides in this County.
26
27
28

PARTIES

1
2 8. Plaintiff Arlette Miller acquired the preferred securities of Wachovia pursuant or
3 traceable to the IPO and has been damaged thereby.
4

5 9. Defendant Wachovia is headquartered in Charlotte, North Carolina. Wachovia is the
6 sponsored trustee of Wachovia Capital Trust IX.

7 10. Defendant Wachovia Capital Trust IX (the "Trust") was designed to sell preferred
8 securities and invest the proceeds in Wachovia assets.

9 11. Defendant G. Kennedy Thompson ("Thompson") is, and at all relevant times was,
10 Chairman of the Board, Chief Executive Officer ("CEO") and President of Wachovia. Thompson
11 signed the Registration Statement.
12

13 12. Defendant Mark C. Treanor ("Treanor") is, and at all relevant times was, Senior
14 Executive Vice President, Secretary and General Counsel of Wachovia. Treanor signed the
15 Registration Statement.
16

17 13. Defendant Thomas J. Wurtz ("Wurtz") is, and at all relevant times was, Chief
18 Financial Officer ("CFO") and Senior Executive Vice President of Wachovia. Defendant Wurtz
19 signed the Registration Statement.

20 14. Defendant Peter M. Carlson ("Carlson") was, at all relevant times, a director of
21 Wachovia. Defendant Carlson signed the Registration Statement.
22

23 15. Defendant John D. Baker II ("Baker") was, at all relevant times, a director of
24 Wachovia. Defendant Baker signed the Registration Statement.

25 16. Defendant Robert J. Brown ("Brown") was, at all relevant times, a director of
26 Wachovia. Defendant Brown signed the Registration Statement.

27 17. Defendant Peter C. Browning ("Browning") was, at all relevant times, a director of
28

1 Wachovia. Defendant Browning signed the Registration Statement.

2 18. Defendant John T. Casteen, III ("Casteen") was, at all relevant times, a director of
3 Wachovia. Defendant Casteen signed the Registration Statement.

4
5 19. Defendant Jerome A. Gitt ("Gitt") was, at all relevant times, a director of Wachovia.
6 Defendant Gitt signed the Registration Statement.

7 20. Defendant William H. Goodwin, Jr. ("Goodwin") was, at all relevant times, a director
8 of Wachovia. Defendant Goodwin signed the Registration Statement.

9
10 21. Defendant MaryEllen C. Herringer ("Herringer") was, at all relevant times, a director
11 of Wachovia. Defendant Herringer signed the Registration Statement.

12 22. Defendant Robert A. Ingram ("Ingram") was, at all relevant times, a director of
13 Wachovia. Defendant Ingram signed the Registration Statement.

14 23. Defendant Donald M. James ("James") was, at all relevant times, a director of
15 Wachovia. Defendant James signed the Registration Statement.

16
17 24. Defendant Mackey J. McDonald ("McDonald") was, at all relevant times, a director
18 of Wachovia. Defendant McDonald signed the Registration Statement.

19 25. Defendant Joseph Neubauer ("Neubauer") was, at all relevant times, a director of
20 Wachovia. Defendant Neubauer signed the Registration Statement.

21 26. Defendant Timothy D. Proctor ("Proctor") was, at all relevant times, a director of
22 Wachovia. Defendant Proctor signed the Registration Statement.

23
24 27. Defendant Ernest S. Rady ("Rady") was, at all relevant times, a director of Wachovia.
25 Defendant Rady signed the Registration Statement.

26 28. Defendant Van L. Richey ("Richey") was, at all relevant times, a director of
27 Wachovia. Defendant Richey signed the Registration Statement.

28

1 29. Defendant Ruth G. Shaw ("Shaw") was, at all relevant times, a director of Wachovia.
2 Defendant Shaw signed the Registration Statement.

3 30. Defendant Lanty L. Smith ("Smith") was, at all relevant times, a director of
4 Wachovia. Defendant Smith signed the Registration Statement.

5 31. Defendant John C. Whitaker, Jr. ("Whitaker") was, at all relevant times, a director
6 of Wachovia. Defendant Whitaker signed the Registration Statement.

7 32. Defendant Dona Davis Young ("Young") was, at all relevant times, a director of
8 Wachovia. Defendant Young signed the Registration Statement.

9 33. The defendants referenced above in ¶¶11-32 are referred to herein as the "Individual
10 Defendants."

11 34. Defendant Wachovia Capital Markets, LLC ("Wachovia Capital") is a non-bank
12 affiliate of Wachovia. Wachovia Capital acted as sole structuring coordinator and sole Book Runner
13 and an underwriter of the Offering.

14 35. Defendant Citigroup Global Markets Inc. ("Citigroup") was an underwriter and a
15 senior co-manager of the Offering.

16 36. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") was
17 an underwriter and a senior co-manager of the Offering.

18 37. Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") was an
19 underwriter and a senior co-manager of the Offering.

20 38. Defendant UBS Securities LLC ("UBS") was an underwriter and a senior co-manager
21 of the Offering.

22 39. Pursuant to the 1933 Act, the defendants referenced in ¶¶34-38 above are referred to
23 herein as the "Underwriter Defendants."

24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**THE FALSE AND DEFECTIVE REGISTRATION
STATEMENT AND PROSPECTUS**

49. On or about February 7, 2007, Wachovia filed with the SEC a Form S-3 Registration Statement for the preferred securities Offering. The securities were to be issued by the Trust, which is a Delaware trust designed to issue preferred securities and invest the proceeds from the sale of securities.

50. On or about May 1, 2007, Wachovia filed its Prospectus for the Offering, which forms part of the Registration Statement and which became effective on May 8, 2007, and at least 30 million shares of Wachovia preferred stock were sold to the public at \$25.00 per share.

51. The Registration Statement and Prospectus contained untrue statements of material fact or omitted to state other facts necessary to make the statements made therein not misleading and was not prepared in accordance with applicable SEC rules and regulations.

52. The Registration Statement and Prospectus included the following statements:

At December 31, 2006, Wachovia had consolidated total assets of \$707.1 billion, consolidated total deposits of \$407.5 billion and consolidated stockholders' equity of \$69.7 million.

53. The Registration Statement and Prospectus also incorporated by reference Wachovia's 2006 Form 10-K which stated in part:

Goals for 2007

For the next year, we will maintain our focus on execution as we migrate the Golden West mortgage model to Wachovia channels and as we introduce Wachovia's General Banking model to our new western markets. At the same time, we will continue to grow our core businesses by capitalizing on the opportunities I have discussed in this letter. I believe that the wealth of opportunities available to us are a great indication of the strength and potential of this company.

Pride with Wachovia

Determination is one of the defining strengths of our company. We take great pride in delivering on what we promise. In 2007 we are more determined than ever

1 to ensure our investors share in our success, and we will not rest until the markets
2 respond with a valuation that reflects our financial performance. We fully expect to
3 deliver on our goal of being a top quartile performer for our investors.

4 2006 was an important year for Wachovia for many reasons. One of the most
5 important was that it brought Herb and Marion Sandler into our corporate family.
6 Herb and Marion built a company, Golden West, which had perhaps the greatest
7 record of any American corporation over the last 25 years. For the last few months
8 Wachovia has been the beneficiary of their management skills and wisdom.

9 ***

10 If more variable rate loans were added to our loan portfolio, we would likely allow
11 fixed rate securities to mature or we would liquidate them, and then add new
12 derivatives that, in effect, would convert the incremental variable rate loans to fixed
13 rate loans. For example, Golden West option ARMs, despite being a monthly
14 floating rate product, reprice on an index that generally lags changes in short-term
15 rates. A portion of these option ARMs are funded with short-term floating rate notes,
16 which together create a profile that is liability-sensitive as measured under our
17 earnings sensitivity analysis. Therefore, in advance of the Golden West merger, we
18 reduced the size of our fixed rate exposure in residential mortgage-backed securities
19 and commercial mortgage-backed securities in order to help achieve the desired
20 interest rate risk profile for the combined company.

21 54. The statements above were inaccurate statements of material facts because they failed
22 to disclose the large amount of impaired mortgage debt on Wachovia's balance sheet.

23 55. Under the rules and regulations governing the preparation of the Registration
24 Statement, the Registration Statement should have disclosed the following facts but did not:

25 (a) Defendants' portfolio of collateralized debt obligations ("CDOs") contained
26 billions of dollars worth of impaired and risky securities, many of which were backed by subprime
27 mortgage loans;

28 (b) Defendants failed to properly account for highly leveraged loans such as
29 mortgage securities; and

30 (c) Wachovia had been heavily involved in mortgages involving the pay-option
31 adjustable rate mortgages ("ARMs"). These pay-option ARMs provided that during the initial term

1 of the loan borrowers could pay only as much as they desired with any underpayment being added
2 to the loan balance. These loans would become toxic (for both Wachovia and the borrowers) once
3 house prices stopped increasing at a rapid rate.
4

5 56. Following the Offering, the Trust securities traded between \$24 and \$25 per share.

6 57. On October 19, 2007, Wachovia issued financial results for the full year 2006, which
7 included results for the fourth quarter of 2006, in a release which stated in part:

- 8 • Lower earnings reflecting disruption in the capital markets resulting
9 in valuation losses of \$1.3 billion before tax and reduced origination
10 and distribution revenues in the Corporate and Investment Bank.
- 11 • Revenue growth led by a 28 percent increase in net interest income,
12 including Golden West, coupled with disciplined expense control
13 partially offset lower fee income.
- 14 • Average loans up 53 percent, driven by higher consumer real estate
15 loans related to the Golden West acquisition, and strong organic
16 growth in commercial, international and auto lending.
- 17 • Average core deposits up 30 percent, including Golden West. Sales
18 productivity solid in expanded markets.
- 19 • Net charge-offs rose 3 basis points to an annualized 0.19 percent of
20 average net loans. Increased provision for credit losses reflects
21 modest deterioration in credit quality, a more uncertain credit
22 environment and loan growth. Higher nonperforming assets largely
23 related to Golden West consumer real estate NPAs and to higher
24 commercial real estate NPAs largely related to downgrades of
25 residential developers.
- 26 • Customer loyalty scores at near record 53.1 percent; organic customer
27 acquisition grew 14.8 percent annualized.

28 ***

29 Wachovia Corp. today reported net income of \$1.69 billion, or 89 cents per share, in
30 the third quarter of 2007 compared with \$1.88 billion, or \$1.17 per share, in the third
31 quarter of 2006.

32 After-tax net merger-related expenses amounted to 1 cent per common share
33 in the third quarter of 2007 and 2 cents per common share in the third quarter of
34 2006. Excluding these expenses, earnings were \$1.71 billion, or 90 cents per share,

1 in the third quarter of 2007 and \$1.90 billion, or \$1.19 per share, in the third quarter
2 of 2006.

3 "I'm very proud of our ability to provide capital, liquidity and advice to our
4 customers and peers in the face of the disruption in the fixed income markets in the
5 third quarter. These conditions clearly had a disappointing impact on the results of
6 market-oriented businesses, but the strength in our core banking and brokerage
7 businesses continued to serve us very well," said Ken Thompson, Wachovia
8 chairman and chief executive officer. "Our loan and deposit trends were solid, and
9 our retail brokerage performance was strong – and poised for even more growth as
10 our A.G. Edwards colleagues join our team. Additionally, the first of our World
11 Savings branch and deposit conversions was completed successfully last weekend,
12 and going forward, attention in our expanded platform returns fully to sales
13 production. While the impact of the market disruption was significant, it's worth
14 noting that the majority of the lower market valuations in the third quarter largely
15 arose from a repricing of risk in the marketplace and do not reflect deterioration in
16 the underlying credit quality of the assets in our leveraged finance and commercial
17 real estate securitization businesses. Looking ahead, we're taking the appropriate
18 steps to ensure that as markets remain unsettled, we focus intently on actively
19 managing our exposures and controlling costs. Longer term, we believe the
20 challenges of the third quarter will be an advantage to companies like Wachovia with
21 strong capital and liquidity positions and a clear understanding of the needs of
22 customers and investors."

23 Results in the third quarter of 2007 included the full quarter impact of the
24 October 1, 2006, acquisition of Golden West. Results do not include the impact of
25 the acquisition of A.G. Edwards, Inc., a retail brokerage firm headquartered in St.
26 Louis, Missouri, which closed on October 1 of this year.

27 ***

28 In the third quarter of 2007 compared with the third quarter of 2006,
Wachovia:

- Grew revenue 4 percent on higher loans and deposits, driven by the addition of Golden West and organic growth, while fee and other income declined reflecting disruption in the capital markets in fixed income and other market-related fees, including net valuation losses of:
 - 1.3 billion in the Corporate and Investment Bank on structured products and leveraged finance warehouse loans and commitments; and
 - \$40 million in Capital Management on asset-backed commercial paper investments.

- 1 • Increased net interest income 28 percent reflecting growth in average
2 commercial loans, up 16 percent, and higher average consumer loans,
3 including the impact of acquisitions.
- 4 • Generated strong commercial loan growth led by strength in middle-
5 market commercial, large corporate and international lending. Increased consumer loans were led by higher real estate loans
6 primarily due to the addition of Golden West, as well as growth in
7 auto lending.
- 8 • Also generated 30 percent growth in average core deposits while
9 average low-cost core deposits were up 7 percent.
- 10 • Generated continued strong performance in retail brokerage managed
11 account fees and solid retail brokerage transaction activity. Strong
12 principal investing results and higher traditional banking fees also
13 contributed to growth.
- 14 • Held noninterest expense growth, including the effect of acquisitions,
15 to 8 percent largely reflecting lower revenue-based compensation in
16 light of the market disruption.
- 17 • Recorded a provision for credit losses of \$408 million reflecting
18 modest deterioration in credit quality, a more uncertain credit
19 environment and loan growth. Net charge-offs were \$206 million, or
20 an annualized 0.19 percent of average net loans. Total nonperforming
21 assets including loans held for sale were \$3.0 billion, or 0.63 percent
22 of loans, foreclosed properties and loans held for sale.

23 Earnings in the third quarter of 2007 included a \$249 million after-tax benefit
24 related to correction of errors primarily in earlier periods in 2007. This related
25 primarily to incorrect application of hedge accounting to certain variable rate demand
26 deposits in the second quarter of 2007. Wachovia's management believes that this
27 impact is not material to current or prior period financial statements, and the Audit
28 Committee of Wachovia's Board of Directors, based on information reviewed by
management with the Committee, concurred with management's conclusion.

58. On this news, the price of Wachovia common stock dropped to \$46.40 per share. The
stock continued to drift lower after this announcement on suspicions the Company would announce
larger write-downs. The preferred shares fell from \$23 in late October to as low as \$20.40 per share
in the first week of November. These fears were confirmed on November 8, 2007, when Wachovia
announced the Company was setting aside \$600 million in the fourth quarter and said securities

1 linked to subprime mortgages dropped by \$1.1 billion in October 2007. This followed write-downs
2 of \$1.3 billion in the third quarter. Wachovia stated:

3
4 Wachovia Corporation today is providing information on the impact of market
5 volatility on its financial results for the month of October and is providing further
6 information on its expectation for credit costs for the fourth quarter of 2007 and
7 certain additional information. Wachovia is providing this information in advance
8 of a presentation by a senior executive on November 9, 2007 to investors and
9 analysts. This same information will be included in Wachovia's Third Quarter
10 Report on Form 10-Q that will be filed on November 9, 2007:

11 **October Market Events** Following our October 2007 announcement of third
12 quarter 2007 results of operations and our financial outlook for the remainder of
13 2007, certain financial markets experienced further deterioration, particularly the
14 markets for subprime residential mortgage-backed securities ("RMBS") and for
15 collateralized debt obligations ("CDOs") collateralized by RMBS ("ABS CDOs").
16 In October, rising defaults and delinquencies in subprime residential mortgages and
17 rating agencies' downgrades of a large number of subprime residential mortgage-
18 related securities led to unprecedented declines in the ABX subprime indices, that
19 contributed to a rapid decline in the valuations of subprime RMBS and ABS CDOs.

20 ***

21 The value of CDOs we have in our portfolio depends on the value of the
22 underlying collateral. ABS CDOs experienced declines in value correlated to the
23 declines in value of subprime RMBS in October. Our third quarter 2007 market
24 disruption-related losses totaling \$1.3 billion pre-tax included \$347 million of
25 subprime-related valuation losses, net of hedges, on ABS CDOs. Due to the October
26 market deterioration, these ABS CDOs experienced further declines in value in the
27 month of October 2007 by an amount we currently estimate to be approximately \$1.1
28 billion pre-tax. At October 31, 2007, we had remaining exposure to ABS CDOs of
\$676 million, including on-balance sheet positions and the notional amount of off-
balance sheet positions, compared to \$1.8 billion at September 30, 2007.

We have exposure to subprime RMBS in other positions totaling \$2.1 billion
at both October 31, 2007, and September 30, 2007. Estimated aggregate valuation
losses of these other positions during the month of October 2007 are immaterial net
of hedges.

Of the remaining asset classes where we recorded market disruption-related
losses in the third quarter of 2007, the aggregate net market value changes in October
in these investments have not been significant. These asset classes include
commercial mortgage, leveraged finance, consumer mortgage, and other structured

1 credit products not collateralized by subprime RMBS. Some of the markets for these
2 asset classes continue to demonstrate poor liquidity and higher than typical volatility
3 while others have displayed moderate stability in October.

4 The fair values of all of our assets that are subject to market valuation
5 adjustments, including subprime RMBS and ABS CDOs, depend on market
6 conditions and assumptions that may change over time. Accordingly, the fair values
7 of these investments in future periods, including at the end of the fourth quarter, and
8 their effect on our financial results, will depend on future market developments and
9 assumptions and may be materially greater or less than the changes in values during
10 October discussed above. For example, markets for all asset classes discussed above
11 have remained extraordinarily volatile in the first week of November, with additional
12 rating agencies' downgrades on subprime RMBS and ABS CDOs, and credit spread
13 widening and illiquidity.

14 Wachovia has historically been a major participant in structuring and
15 underwriting CDOs. As measured by lead underwriter league table rankings,
16 Wachovia ranked 3rd for both the first nine months of 2007 and the full year 2006,
17 with issuance volumes of \$19.6 billion and \$23.4 billion, respectively. The primary
18 focus of Wachovia's CDO business has been, and continues to be, transactions
19 backed by commercial loans and commercial real estate loans. Our issuance of ABS
20 CDOs has been limited. We originated three ABS CDOs in the first nine months of
21 2007 and six in full year 2006, accounting for approximately 16 percent and 23
22 percent, respectively, of the total issuance volume of our CDO business during these
23 periods.

24 Additionally, due to anticipated loan growth and the impact of continuing
25 credit deterioration in our loan portfolio, we expect to increase our allowance for loan
26 losses in the fourth quarter of 2007. The expected credit deterioration will likely be
27 focused in certain geographic areas that have recently experienced dramatic declines
28 in housing values. We expect that these declines will correlate to increases in loan
losses for loans originated within the last two years within these geographic areas.
Accordingly, Wachovia now expects to record a loan loss provision in the fourth
quarter of 2007 by an amount estimated to be between \$500 million and \$600 million
in excess of charge-offs for the quarter. The actual provision will be determined in
accordance with our policies and procedures, will depend on credit conditions and
assumptions at quarter-end and may be materially greater or less than the range
discussed in the preceding sentence.

59. As the *Associated Press* reported on November 9, 2007, after Wachovia's
announcement:

Wachovia Corp. said Friday the value of securities it owns that are backed by loans
sank by about \$1.1 billion in October, making it the latest major financial institution
to warn of continuing losses in the credit markets.

1 The nation's fourth largest banking company also said it plans to boost its
2 allowance for loan losses in the fourth quarter due to expected credit deterioration in
3 the housing market in certain regions. The provision is pegged at \$500 million to
\$600 million in excess of charge-offs in the quarter.

4 Wachovia shares dropped \$1.43, or 3.6 percent, to \$38.87 in morning trading
5 Friday after falling to a new 52-week low of \$38.05.

6 The news heightened fears that the fallout from the subprime turmoil is
7 spreading deeper into credit markets. It also raised questions about the bank's
8 October 2006 acquisition of adjustable-rate mortgage lender Golden West Financial
Corp. of Oakland, Calif.

9 "We believe the company is trying to get ahead of likely higher future
10 mortgage losses in California," Deutsche Bank Securities analyst Mike Mayo wrote
11 in a client note. "Per Golden West, it now becomes even more obvious that
Wachovia purchased the thrift at the wrong time of the cycle."

12 The weakening markets – which Wachovia estimates could get worse over
13 the last two months of the quarter – cut the value of the bank's so-called
collateralized debt obligations by more than 60 percent.

14 As of Sept. 30, Wachovia had \$1.8 billion in CDO exposure; after the latest
15 writedowns, the exposure is now \$676 million.

16 CDOs are complex instruments that combine slices of different kind of risk.
17 CDOs are often backed, in part, by subprime mortgages – loans given to customers
18 with poor credit history. As those mortgages have increasingly defaulted, the value
of the CDOs has plummeted.

19 Wachovia has an additional \$2.1 billion of exposure to more traditional
20 subprime mortgage-backed bonds. The value of those holdings remained steady in
October as hedging strategies offset losses.

21 In a regulatory filing with the Securities and Exchange Commission, the
22 financial services provider said the market in November so far remains
"extraordinarily volatile."

23 Analysts polled by Thomson Financial, on average, were forecasting earnings
24 of \$1.08 per share for Wachovia before the writedown announcement.

25 Friedman Billings Ramsey analyst Gary B. Townsend predicted Friday that
26 Wachovia's shares "will remain under pressure until real estate markets and
nonperforming assets levels stabilize."

27 60. On this news, Wachovia's stock price collapsed to below \$40 per share. The
28

1 preferred shares dropped to nearly \$20 per share on this news.

2 **FIRST CAUSE OF ACTION**

3 **Violations of §11 of the 1933 Act**
4 **Against All Defendants**

5 61. Plaintiff repeats and realleges each and every allegation contained above.

6 62. This Count is brought pursuant to §11 of the 1933 Act, 15 U.S.C. §77k, on behalf
7 of the Class, against all defendants.

8 63. The Registration Statement was false and misleading, contained untrue statements
9 of material facts, omitted to state other facts necessary to make the statements made not
10 misleading, and omitted to state material facts required to be stated therein.

11 64. Wachovia is the registrant for the IPO. As issuer of the shares, Wachovia is
12 strictly liable to plaintiff and the Class for the misstatements and omissions.

13 65. The Individual Defendants named herein were responsible for the contents and
14 dissemination of the Registration Statement. Each of the Individual Defendants signed or
15 authorized the signing of the Registration Statement. None of the defendants named herein made
16 a reasonable investigation or possessed reasonable grounds for the belief that the statements
17 contained in the Registration Statement were true and without omissions of any material facts
18 and were not misleading.

19 66. By reason of the conduct herein alleged, each defendant violated, and/or
20 controlled a person who violated, §11 of the 1933 Act.

21 67. Plaintiff acquired Wachovia shares pursuant and/or traceable to the Registration
22 Statement for the IPO.

23 68. Plaintiff and the Class have sustained damages. At the time of their purchases of
24 Wachovia shares, plaintiff and other members of the Class were without knowledge of the facts
25

1 concerning the wrongful conduct alleged herein and could not have reasonably discovered those
2 facts prior to October 2007. Less than one year has elapsed from the time that plaintiff
3 discovered or reasonably could have discovered the facts upon which this complaint is based to
4 the time that plaintiff filed this complaint. Less than three years elapsed between the time that
5 the securities upon which this Count is brought were offered to the public and the time plaintiff
6 filed this complaint.
7

8 **SECOND CAUSE OF ACTION**

9 **Violations of §12(a)(2) of the 1933 Act**
10 **Against All Defendants**

11 69. Plaintiff repeats and realleges the allegations set forth above as if set forth fully
12 herein. For purposes of this Cause of Action, plaintiff expressly excludes and disclaims any
13 allegation that could be construed as alleging fraud or intentional or reckless misconduct, as this
14 Cause of Action is based solely on claims of strict liability and/or negligence under the 1933 Act.

15 70. By means of the defective Registration Statement, defendants assisted in the sale
16 of shares of the Company's securities to plaintiff and other members of the Class.

17 71. The Registration Statement contained untrue statements of material fact, and
18 concealed and failed to disclose material facts, as detailed above. Defendants owed plaintiff and
19 the other members of the Class who purchased Wachovia securities pursuant to the Registration
20 Statement the duty to make a reasonable and diligent investigation of the statements contained in
21 the Registration Statement to ensure that such statements were true and that there was no
22 omission to state a material fact required to be stated in order to make the statements contained
23 therein not misleading. Defendants, in the exercise of reasonable care, should have known of the
24 misstatements and omissions contained in the Registration Statement as set forth above.

25 72. Plaintiff did not know, nor in the exercise of reasonable diligence could have
26

27
28

1 known, of the untruths and omissions contained in the Registration Statement at the time she
2 acquired the Company's securities.

3 73. By reason of the conduct alleged herein, defendants violated §12(a)(2) of the 1933
4 Act. As a direct and proximate result of such violations, plaintiff and the other members of the
5 Class who purchased Wachovia preferred shares pursuant to the Registration Statement sustained
6 substantial damages in connection with their purchases of Wachovia shares. Accordingly,
7 plaintiff and the other members of the Class who hold such shares have the right to rescind and
8 recover the consideration paid for their shares, and hereby tender their shares to the defendants
9 sued herein. Class members who have sold their shares seek damages to the extent permitted by
10 law.
11
12

13 **THIRD CAUSE OF ACTION**

14 **Violations of §15 of the 1933 Act**
15 **Against the Individual Defendants**

16 74. Plaintiff repeats and realleges each and every allegation contained above.

17 75. This Cause of Action is brought pursuant to §15 of the 1933 Act against the
18 Individual Defendants.

19 76. Each of the Individual Defendants was a control person of Wachovia by virtue of his
20 or her position as a director, senior officer and/or major shareholders of Wachovia which allowed
21 each of these defendants to exercise control over Wachovia and its operations.

22 77. Each of the Individual Defendants was a culpable participant in the violations of §11
23 of the 1933 Act alleged in the Cause of Action above, based on their having signed or authorized the
24 signing of the Registration Statement and having otherwise participated in the process which allowed
25 the IPO to be successfully completed.
26
27
28

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for relief and judgment, as follows:

- A. Determining that this action is a proper class action and certifying plaintiff as a Class representative;
- B. Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;
- D. Awarding rescission or a rescissory measure of damages; and
- E. Such equitable/injunctive or other relief as deemed appropriate by the Court.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

DATED: January 16, 2009

GLANCY BINKOW & GOLDBERG LLP
 LIONEL Z. GLANCY (#134180)
 MICHAEL GOLDBERG (#188669)
 1801 Avenue of the Stars, Suite 311
 Los Angeles, California 90067
 Telephone: (310) 201-9150
 Facsimile: (310) 201-9160



 Lionel Z. Glancy

ABRAHAM FRUCHTER & TWERSKY LLP
 JEFFREY S. ABRAHAM
 JACK G. FRUCHTER
 One Pennsylvania Plaza, Suite 2805
 New York, NY 10119
 Telephone: (212) 279-5050
 Facsimile: (212) 279-3655

Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
SAMUEL H. RUDMAN
DAVID A. ROSENFELD
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: (631) 367-7100
Facsimile: (631) 367-1173

Of Counsel



1 BERNSTEIN LITOWITZ BERGER
 & GROSSMANN LLP
 2 BLAIR A. NICHOLAS (Bar No. 178428)
 TIMOTHY A. DeLANGE (Bar No. 190768)
 3 12481 High Bluff Drive, Suite 300
 San Diego, CA 92130
 4 Tel: (858) 793-0070
 Fax: (858) 793-0323

FILED
 ALAMEDA COUNTY

JAN 27 2009

CLERK OF THE SUPERIOR COURT
 By *[Signature]* Deputy

5 *Counsel for Orange County Employees'*
 6 *Retirement System, Louisiana Sheriffs'*
 7 *Pension and Relief Fund, Government of*
 8 *Guam Retirement Fund and Proposed*
 9 *Co-Lead Counsel for the Class*

FILED
 ALAMEDA COUNTY

JAN 29 2009

CLERK OF THE SUPERIOR COURT
 By *[Signature]* Deputy

10 [Additional counsel appear on signature page]

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 MICHAEL SWISKAY and NORMAN
 LEVIN, Individually and on Behalf of All
 Others Similarly Situated,

Case No. RG08426378

(lead)

CLASS ACTION

14 Plaintiffs,

STIPULATION AND [PROPOSED]
 ORDER

15 v.

16 WACHOVIA CORPORATION, et al.

17 Defendants.

18 ARLETTE MILLER, on Behalf of Herself and
 All Others Similarly Situated,

Case No. RG09431365

CLASS ACTION

19 Plaintiffs,

20 v.

21 WACHOVIA CORPORATION, et al.

22 Defendants.

23
 24
 25
 26
 27
 28
 STIPULATION AND [PROPOSED] ORDER
 Case No. RG08426378

2/2/09 CPH
3/10/09 CMC

[Signature]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORANGE COUNTY EMPLOYEES'
RETIREMENT SYSTEM, LOUISIANA
SHERIFFS' PENSION AND RELIEF FUND,
GOVERNMENT OF GUAM RETIREMENT
FUND and SOUTHEASTERN
PENNSYLVANIA TRANSPORTATION
AUTHORITY, Individually and on Behalf of
All Others Similarly Situated,

Plaintiffs,

v.

PETER M. CARLSON, et al.

Defendants.

Case No. RG09431908

CLASS ACTION

1 WHEREAS, there are currently three related cases pending in this Court alleging claims
2 under the Securities Act of 1933 relating to preferred stock and notes issued by Wachovia
3 Corporation and certain of its affiliates;

4 WHEREAS, the three pending cases are: *Swiskay v. Wachovia, et al.*, RG08-426378,
5 *Miller v. Wachovia, et al.*, RG09-431365, and *Orange County Employee's Retirement System v.*
6 *Carlson, et al.*, RG09-431908;

7 WHEREAS, by Order dated January 23, 2009, the Court directed counsel for all plaintiffs
8 in the above-captioned actions to file motions for class counsel on or before January 27, 2009
9 and to "meet and confer regarding the organization of class counsel before filing motions
10 regarding that subject;"

11 WHEREAS, counsel for the plaintiffs in the above-captioned actions have conferred with
12 counsel for Wachovia and all of the individually named defendants in the above-captioned
13 actions and they have represented to counsel for plaintiffs that they do not oppose the agreement
14 set forth below;

15 WHEREAS, counsel for plaintiffs in the above-captioned cases have conferred with
16 counsel for the underwriter defendants currently represented by counsel in the above-captioned
17 actions, and counsel for the underwriter defendants currently represented by counsel in the
18 above-captioned cases have represented to counsel for plaintiffs that they are in the process of
19 confirming with their clients that they do not oppose the agreement set forth below;

20 WHEREAS, counsel for all plaintiffs in the above-captioned actions have conferred and,
21 subject to the approval of the Court, hereby STIPULATE and AGREE as follows:

- 22 1. The above captioned actions should be consolidated and the lead action should be
23 designated as *In re Wachovia Preferred Securities and Bond/Notes Litigation*, No. RG08-
24 426378;

25
26
27
28

1 2. The laws firms of Bernstein Litowitz Berger & Grossmann LLP, Barroway Topaz
2 Kessler Meltzer & Check, LLP and Coughlin Stoia Geller Rudman & Robbins LLP shall serve
3 as Co-Lead and Class Counsel in this action;

4 Dated: January 27, 2009

Respectfully submitted,

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP


BLAIR A. NICHOLAS

BLAIR A. NICHOLAS
TIMOTHY A. DeLANGE
12481 High Bluff Drive, Suite 300
San Diego, CA 92130
Tel: (858) 793-0070
Fax: (858) 793-0323

-and-

GERALD H. SILK
AVI JOSEFSON
(*pro hac vice* admissions forthcoming)
1285 Avenue of the Americas
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444

*Counsel for Orange County Employees' Retirement
System, Louisiana Sheriffs' Pension and Relief
Fund, Government of Guam Retirement Fund and
Proposed Co-Lead Counsel for the Class*

BARROWAY TOPAZ KESSLER
MELTZER & CHECK LLP


NICHOLE BROWNING

NICHOLE BROWNING
2125 Oak Grove Road, Suite 120
Walnut Creek, CA 94598
Tel: (925) 945-0770
Fax: (925) 945-8792

-and-

JOHN A. KEHOE
LAUREN WAGNER PEDERSON
BHARATI SHARMA
MICHELLE M. NEWCOMER
(*pro hac vice* admissions forthcoming)
280 King of Prussia Road
Radnor, PA 19087

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Tel: (610) 667-7706
Fax: (610) 667-7056

*Counsel for Southeastern Pennsylvania
Transportations Authority and Proposed Co-Lead
Counsel for the Class*

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP

Samuel Rudman /SR

SAMUEL H. RUDMAN

SAMUEL H. RUDMAN
DAVID A. ROSENFELD
58 South Service Road, Suite 200
Melville, NY 11747
Tel: (631) 367-7100
Fax: (631) 367-1173

*Attorneys for Plaintiff Miller and Proposed Co-
Lead Counsel for the Class*

GLANCY BINKOW &
& GOLDBERG LLP

Lionel Glancy /LZG

LIONEL Z. GLANCY

LIONEL Z. GLANCY
MICHAEL GOLDBERG
1801 Avenue of the Stars, Suite 311
Los Angeles, CA 90067
Tel: (310) 201-9150
Fax: (310) 201-9160

Attorneys for Plaintiffs Swiskay, Levin and Miller

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ABRAHAM FRUCHTER & TWERSKY LLP

Jeffrey Abraham
JEFFREY ABRAHAM

JEFFREY ABRAHAM
One Penn Plaza, Suite 2805
New York, NY 10119
Tel: (212) 279-5050
Fax: (212) 279-3655

Attorneys for Plaintiff Miller

SO ORDERED

DATED: *July 29, 2009*

St A Brk
STEVEN A. BRICK
Judge of the Superior Court



FILED [Signature]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

ALAMEDA COUNTY

JAN 23 2009

CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

MICHAEL SWISKAY, et al,
Plaintiffs,
v.

WACHOVIA CORPORATION, et al,
Defendants.

ARLETTE MILLER, et al,
Plaintiffs,
v.

WACHOVIA CORPORATION, et al,
Defendants.

ORANGE COUNTY EMPLOYEE'S
RETIREMENT SYSTEM, et al,
Plaintiffs,
v.

PETER M. CARLSON, et al,
Defendants.

No. RG08-426378

NOTICE OF DISCLOSURES AND ORDER
SHORTENING TIME.

No. RG09-431365

No. RG09-431908

There are currently three related cases pending in this Court: *Swiskay v. Wachovia*, RG08-426378, *Miller v. Wachovia*, RG09-431365, and *Orange County Employee's Retirement System v. Carlson*, RG09-431908.

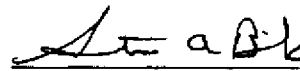
On January 22, 2009, the Court's research attorney held an informal conference call with Lionel Glancy and Marc Godino, counsel for Plaintiffs in *Swiskay* and *Miller*; Jeffrey Abraham, counsel for Plaintiffs in *Miller*, Israel David, counsel for Wachovia and the individual defendants in *Swiskay* and *Miller*, and Sara Brody, counsel for the underwriting defendants (Citicorp, Merrill

1 IT IS ORDERED that plaintiffs in *Swiskay* may file and serve motions to consolidate *Swiskay*,
2 *Miller*, and *Orange County*, to order the structure of class counsel, and for admission pro hac
3 vice under C.R.C. 9.40 on shortened time so those motions can be heard on February 2, 2009, at
4 3:00 p.m. The motions must be filed on or before January 27, 2009. Any opposition is due on
5 January 30, 2009, at 4:00 pm.

6 *Orange County*. On January 22, 2009, the Court's research attorney received a telephone
7 call from Ian Berg, counsel for plaintiff in *Orange County*, informing Department 17 of the
8 existence of that case and seeking permission to file a motion to consolidate *Swiskay*, *Miller*, and
9 *Orange County* on shortened time so it can be heard on February 2, 2009, together with the
10 motions in *Swiskay*. IT IS ORDERED that plaintiffs in *Orange County* may file motions to
11 consolidate *Swiskay*, *Miller*, and *Orange County*, and to order the structure of class counsel on
12 shortened time so those motions can be heard on February 2, 2009, at 3:00 p.m. The motions
13 must be filed on or before January 27, 2009. Any opposition is due on January 30, 2009, at 4:00
14 pm. The Court ORDERS counsel for plaintiffs in all three cases to meet and confer regarding the
15 organization of class counsel before filing motions regarding that subject.

16 The Court ORDERS counsel to inform the Court promptly if they become aware of any
17 additional related cases in state or federal courts. C.R.C. 3.300.

18
19 Dated: January 23, 2009



20 Steven A. Brick
21 Judge of the Superior Court
22
23
24
25
26

1 Lynch, Morgan Stanley, and UBS) in *Swiskay* and *Miller*. Participation in the informal call does
2 not constitute an “appearance” by any defendant.

3 Disclosures. In the informal call, the Court’s research attorney made some disclosures
4 that the Court now states formally. The Court discloses that Judge Brick was a partner at the law
5 firm of Orrick, Herrington & Sutcliffe with Defendant Mary Ellen C. Herringer approximately 20
6 years ago. Judge Brick considers Ms. Herringer a friend but does not see her or socialize with
7 her on a regular basis. The Court does not think that this requires recusal under C.C.P. §
8 170.1(a)(6)(A)(ii) or (iii).

9 The Court discloses that Judge Brick has a “financial interest” in Citicorp, Inc. within the
10 meaning of C.C.P. §§ 170.1(a)(3) and 170.5(b) because he owns stock with a current market
11 value above \$1,500. The Court understands that a “financial interest” in Citicorp is not
12 equivalent to a “financial interest” in Citicorp Global Markets, Inc., and therefore that recusal is
13 not required under C.C.P. § 170.1(a)(3). Rothman, *Cal. Judicial Conduct Handbook* (3d ed.
14 2007) § 7.30, pp. 324-325. See also *Storek & Storek, Inc. v. Superior Court* (2003) 2003 WL
15 22430187. The Court does not think that Judge Brick’s “financial interest” in Citicorp requires
16 recusal under C.C.P. § 170.1(a)(6)(A)(ii) or (iii).

17 Following the disclosures in the informal call, the parties in *Swiskay* and *Miller* all
18 indicated that they did not object to Judge Brick managing this case. If any party in any of
19 *Swiskay*, *Miller*, or *Orange County* has any concern with the above disclosures, they should
20 bring them to the Court’s attention at the hearing on February 2, 2009.

21 Order shortening time. In the informal call, counsel for plaintiffs in both *Swiskay* and
22 *Miller* sought permission to file motions to consolidate *Swiskay* and *Miller*, to order the structure
23 of class counsel, and for admission pro hac vice under C.R.C. 9.40 on shortened time so they can
24 be heard together with the complex designation hearing in *Swiskay* set for February 2, 2009. In
25 the informal call, counsel for defendants stated that they have no opposition to the scheduling
26 request and indicated that they were not likely to oppose the underlying motions. Accordingly,

Case Title/No.:

SWISKAY VS. WACHOVIA RG08426378
MILLER VS. WACHOVIA RG09431365
ORANGE COUNTY EMPLOYEES' RETIREMENT SYSTEM VS. CARLSON RG09431908

**CLERK'S CERTIFICATE OF MAILING
(CCP §1013a)**

I certify that the following is true and correct:

I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 1221 Oak Street, Oakland, California. I served this NOTICE OF DISCLOSURES AND ORDER SHORTENING TIME by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Oakland, California, following standard court practices.

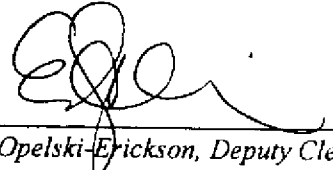
Lionel Z. Glancy
Michael Goldberg
GLANCY BINKOW & GOLDBERG LLP
1801 Avenue of the Stars, Suite 311
Los Angeles, CA 90067

Blair A. Nicholas
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
12481 High Bluff Drive, Suite 300
San Diego, CA 92130

Nichole Browning
BARROWAY TOPAZ KESSLER MELTZER & CHECK, LLP
2125 Oak Grove Road, Suite 120
Walnut Creek, CA 94598

Dated: January 23, 2009

Executive Officer/Clerk of the Superior Court

By 
Elizabeth Opelski-Erickson, Deputy Clerk