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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

IN RE WACHOVIA SECURITIES, LLC)
WAGE AND HOUR LITIGATION

This Document Relates To:

ALL ACTIONS

MDL No. 07-1807 DOC

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE**

Court: 9D
Hon. David O. Carter

1 This Joint Stipulation of Class Action Settlement and Release
2 (“Agreement”) is entered into between the named Plaintiffs Jay Austin, Charles
3 Badain, Bruce Barron, Robert Burakoff, John Cochran, Anthony Nicholas
4 Codispoti, Shawn Dewane, Michael DiLustro, David Dougherty, Paul Firth, Amir
5 Gauhar, Jason Goldstein, Gilbert Good, Peter Janowsky, George Keim, Alan B.
6 Krichman, Scott Lowe, Anthony J. Mooney, Carrie Morich, Priscilla Mueller,
7 Gene Panasenکو, Mary O’Reilly, Larry Phillips, Gerald Rouse, Deane Rudofker,
8 Scott Standel, Jason Clark, Wayne Ribnick, David Mizrahi, Howard Schneider,
9 Anthony San Andres, Robert Huntley, Lloyd Cohen, Stephen Pincin, and Scott
10 Dahlberg (collectively, the “Named Plaintiffs” or “Class Representatives”),¹
11 individually and as class representatives on behalf of the “Settlement Class”
12 (defined in Section III.I.36 of this Agreement), on the one hand, and Defendants
13 Wachovia Corporation, Wachovia Securities, LLC, and First Union Securities, Inc.
14 (collectively, the “Wachovia Defendants” or “Wachovia Securities”), on the other
15 hand. The Class Representatives, the Settlement Class they represent, and the
16 Wachovia Defendants will be referred to collectively as the “Settling Parties.”

17 IT IS HEREBY STIPULATED AND AGREED by and between the Settling
18 Parties as set forth below:

19 **I. RECITALS AND THE NATURE OF THE LITIGATION**

20 1. Wachovia Securities, LLC provides financial advisory, brokerage,
21 asset management and other financial services to clients throughout the United
22 States. First Union Securities, Inc. was acquired by Wachovia Securities, LLC in
23 the year 2002. Wachovia Securities, LLC is an affiliate of Wachovia Corporation
24 and has its principal place of business in St. Louis, Missouri.

25 _____
26 ¹ The claims of Plaintiffs Jonathan Graham and Debra M. Reda-Cappos in this Litigation have
27 already been dismissed by the Court with prejudice; therefore, they are no longer Class
28 Representatives for purposes of this Settlement. Plaintiffs Mary O’Reilly, Michael DiLustro,
and Paul Firth were never employed by the Wachovia Defendants. Therefore, their claims in the
Litigation against the Wachovia Defendants are subject to dismissal, but they are not entitled to
any consideration under this Agreement.

1 the subject of a separate settlement agreement and approval process. This
2 Agreement also is not intended to release the claims at issue in Howard Schneider,
3 et al. v. First Union Securities, Inc.; Jeffrey Bouchard; and Wachovia Securities,
4 LLC, Superior Court of The State Of California County of Los Angeles, Case No.
5 BC282338 (the “Schneider Action”); specifically, the definition of Released
6 Claims in this Agreement does not include those claims for any type of relief in the
7 (currently proposed) Fourth Amended Complaint by Plaintiffs in the Schneider
8 Action. Otherwise, however, any claims not pled in the Fourth Amended
9 Complaint in the Schneider Action that also meet the definition of Released Claims
10 in this Agreement, specifically including claims concerning trading errors and
11 those allegedly unlawful wage deductions, will be Released Claims for purposes of
12 this Agreement.

13 5. The Wachovia Defendants dispute all of the Named Plaintiffs’ claims.
14 Contrary to the allegations of the Named Plaintiffs in the Litigation, the Wachovia
15 Defendants believe that they have properly classified the Named Plaintiffs and all
16 of the “Class Members” (defined in Section III.1.5) as exempt from overtime pay
17 under the FLSA and all applicable state laws; that they have made no unlawful or
18 improper deductions or chargebacks from the Named Plaintiffs’ or Class
19 Members’ pay; that they do not owe any Named Plaintiffs or Class Members for
20 any business expenses as they properly reimbursed and did not charge Named
21 Plaintiffs or Class Members for any necessary business expenses; that the Named
22 Plaintiffs and Class Members who are former employees have received proper and
23 timely payments upon employment separation; that as exempt employees who
24 could take meal and rest breaks whenever they choose, the Named Plaintiffs and
25 Class Members have no legitimate claim for violation of California’s meal and rest
26 break laws; and that the Litigation is not suitable for collective action treatment
27 under the FLSA or class action treatment under any state law, but for the
28 stipulations entered into as a result of this Agreement.

1 6. The Settling Parties have agreed to enter into this Agreement to avoid
2 the risks, costs, and delays associated with further litigation.

3 7. This Agreement is the product of lengthy negotiations over the course
4 of approximately eight (8) months. These negotiations included two formal
5 mediation sessions before Mark Rudy, Esq. The Parties held the first mediation
6 session on June 6 and June 7, 2008, and the second mediation session on October
7 27 and October 28, 2008. The mediations resulted in a settlement in principle that
8 formed the basis for this Agreement. The Settling Parties have also engaged in
9 lengthy and numerous settlement discussions outside of these formal mediation
10 sessions. At all times, the settlement negotiations have been adversarial, non-
11 collusive, and at arm's length.

12 8. The Parties have taken depositions and have exchanged documents
13 and detailed information concerning the claims, defenses, and alleged damages at
14 issue. The Named Plaintiffs and "Class Counsel" (defined in Section III.1.4) are
15 sufficiently familiar with the facts of this case and the applicable federal and state
16 laws to make an informed judgment as to the fairness of this Agreement. The
17 Named Plaintiffs and Class Counsel have concluded that this Agreement is fair,
18 reasonable, and in the best interests of the Class Members, and respectfully request
19 that this Agreement be approved by the Court.

20 **II. THE CONDITIONAL NATURE OF THIS AGREEMENT**

21 1. This Agreement and all associated exhibits or attachments are made
22 for the sole purpose of attempting to consummate settlement of this action on a
23 class-wide basis. The Settling Parties entered this Agreement in compromise of
24 claims that were disputed in good faith. Because the Named Plaintiffs pled the
25 Litigation as a class and collective action and because the settlement is on a class-
26 wide basis, this Agreement must receive preliminary and final approval by the
27 Court. Accordingly, the Settling Parties enter into this Agreement on a conditional
28 basis. In the event that the Court does not execute and enter an order granting final

1 approval of this Agreement, or in the event that the associated judgment does not
2 become final for any reason, this Agreement shall be deemed null and void *ab*
3 *initio*, it shall be of no force or effect whatsoever, it shall not be referred to or used
4 for any purpose whatsoever, and the negotiation, terms and entry of this
5 Agreement shall remain subject to the provisions of Federal Rule of Evidence 408,
6 any and all statutes of a similar nature, and the mediation privilege.

7 2. The Wachovia Defendants deny all of the claims as to liability,
8 damages, penalties, interest, fees, restitution and all other forms of relief as well as
9 the class and collective allegations asserted in the Litigation. The Settling Parties
10 have agreed to resolve the claims against the Wachovia Defendants in the
11 Litigation via this Agreement, but to the extent this Agreement is deemed void or
12 the "Settlement Effective Date" (defined in Section III.1.38) does not occur, the
13 Wachovia Defendants do not waive, but rather expressly reserve, all rights to
14 challenge all claims and allegations in the Litigation upon all procedural and
15 factual grounds, including without limitation the ability to challenge class and/or
16 collective action treatment on any grounds and/or to assert any and all defenses and
17 privileges as if this Agreement were not reached. The Class Representatives and
18 all Class Counsel agree that the Wachovia Defendants retain and reserve these
19 rights, and agree not to take a position to the contrary. Specifically, the Class
20 Representatives and Class Counsel agree not to argue, and hereby waive any
21 argument, that the Wachovia Defendants could not contest class certification, that
22 the Wachovia Defendants must concede to proceed collectively on any grounds if
23 the Litigation were to proceed, and/or that this Agreement is evidence of or
24 constitutes an admission that class certification or a collective action may be
25 appropriate. This Agreement and the negotiations leading to it shall not be
26 admissible or referenced in any fashion in the Litigation if the Agreement is not
27 finally approved by the Court and if the Litigation against the Wachovia
28 Defendants is not dismissed with prejudice.

1 **III. TERMS OF STIPULATION & AGREEMENT OF SETTLEMENT**

2 NOW, THEREFORE, IT IS HEREBY FURTHER STIPULATED AND
3 AGREED by and between the Class Representatives (for themselves and the
4 Settlement Class Members) and the Wachovia Defendants, with the assistance of
5 their respective counsel or attorneys of record, that, as among the Settling Parties,
6 including all Settlement Class Members, the claims against the Wachovia
7 Defendants in the Litigation and the Released Claims shall be finally and fully
8 compromised, settled, released, and dismissed with prejudice, as to all Settling
9 Parties, upon and subject to the terms and conditions of this Agreement and the
10 Court's Judgment.

11 1. **Definitions**

12 As used in all parts of this Agreement, the following terms have the
13 meanings specified below:

14 1.1 **"Base Monthly Payment"** is defined in Section 3.6.

15 1.2 **"Claim Form"** is the form through which Class Members may
16 seek to become Participating Claimants. The proposed Claim Form is attached
17 hereto as Attachment 1 of Exhibit A.

18 1.3 **"Claims Administrator"** means the third-party claims
19 administration firm, The Garden City Group, Inc.

20 1.4 **"Class Counsel"** means, collectively, all of the counsel
21 representing the Named Plaintiffs in the Litigation. As the Court has appointed
22 Joseph Cotchett of the law firm Cotchett, Pitre & McCarthy and Jeffrey G. Smith
23 of the law firm Wolf Haldenstein Adler Freeman & Herz LLP as Co-Lead Counsel
24 for the Named Plaintiffs in the Litigation, and per the Court's Order of September
25 6, 2007, Mr. Cotchett and Mr. Smith have the authority to enter into this
26 Agreement on behalf of the Class Members.

27 1.5 **"Class Members"** means all individuals who were employed
28 by the Wachovia Defendants in Covered Positions (defined below) in the United

1 States during the applicable Class Periods (defined below). It is understood and
2 agreed by the Settling Parties that there are approximately 10,000 or more Class
3 Members. Class Members include all Rule 23 Class Members and all individuals
4 qualified to become FLSA Collective Group Members, as described below.

5 1.6 “**Class Notice**” means a notice (and associated Claim Form and
6 Exclusion Form) to be approved by the Court, substantially in the form attached
7 hereto as Exhibit A.

8 1.7 “**Class Periods**” are as follows:

9 1.7.1 with respect to Class Members and Class Representatives
10 who worked for the Wachovia Defendants in Covered Positions in California,
11 September 18, 1998, through the date the Court enters its order granting
12 preliminary approval of this Agreement;

13 1.7.2 with respect to Class Members and Class Representatives
14 who worked for the Wachovia Defendants in Covered Positions in Illinois, August
15 30, 2003, through the date the Court enters its order granting preliminary approval
16 of this Agreement;

17 1.7.3 with respect to Class Members and Class Representatives
18 who worked for the Wachovia Defendants in Covered Positions in Minnesota,
19 August 31, 2003, through the date the Court enters its order granting preliminary
20 approval of this Agreement;

21 1.7.4 with respect to Class Members and Class Representatives
22 who worked for the Wachovia Defendants in Covered Positions in New York,
23 August 30, 1999, through the date the Court enters its order granting preliminary
24 approval of this Agreement;

25 1.7.5 with respect to Class Members and Class Representatives
26 who worked for the Wachovia Defendants in Covered Positions in New Jersey,
27 September 21, 2000, through the date the Court enters its order granting
28 preliminary approval of this Agreement;

1 1.7.6 with respect to Class Members and Class Representatives
2 who worked for the Wachovia Defendants in Covered Positions in Ohio, June 1,
3 2005, through the date the Court enters its order granting preliminary approval of
4 this Agreement;

5 1.7.7 with respect to Class Members and Class Representatives
6 who worked for the Wachovia Defendants in Covered Positions in Pennsylvania,
7 May 5, 2003, through the date the Court enters its order granting preliminary
8 approval of this Agreement;

9 1.7.8 with respect to Class Members with respect to Class
10 Members in all other states, the District of Columbia, and any U.S. territories:

11 (a) for those who submitted consents to join the
12 Litigation before December 31, 2008, the period that runs from May 21, 2005,
13 which is three years prior to the date of tolling the limitations period as agreed
14 upon in the Tolling Agreement (defined below), to the date on which the Court
15 enters its order granting preliminary approval of this Agreement; or

16 (b) for those who did not submit consents to join the
17 Litigation before December 31, 2008, the period that runs from the date that is
18 three years prior to the date the Court enters its order granting preliminary approval
19 of this Agreement; and

20 1.7.9 with respect to Class Members and Class Representatives
21 who worked in Covered Positions in more than one state during the time periods
22 relevant to work performed in those states, the Class Period applicable to each state
23 will determine the extent to which the work performed in that state is covered by
24 this Agreement.

25 1.8 “**Class Representatives**” means the Named Plaintiffs in the
26 Litigation as identified in the introductory paragraph of this Agreement.

27 1.9 “**Court**” means the United States District Court for the Central
28 District of California.

1 1.10 **“Covered Positions”** refers to the positions of Financial
2 Advisor or Financial Advisor Trainee, as those terms are commonly used by the
3 Wachovia Defendants.

4 1.11 **“Cure Letter”** means a letter that will be sent by the Claims
5 Administrator to any Class Member who submits a defective Claim Form or
6 Exclusion Form identifying for that Class Member what corrections must be made
7 to cure the defective form and to make it a Qualifying Claim Form or Qualifying
8 Exclusion Form (defined in Sections 1.30 and 1.31, respectively).

9 1.12 **“Enhancement Payments”** are defined in Section 3.2.2.

10 1.13 **“Exclusion Form”** is the form through which Rule 23 Class
11 Members request exclusion from the Settlement Class. The proposed Exclusion
12 Form is attached hereto as Attachment 2 of Exhibit A.

13 1.14 **“Federal Claims Release”** is the release of certain wage and
14 hour claims under federal law, as described in Section 9.1.

15 1.15 **“Final”** means the latest of: (i) the date of final affirmance on
16 an appeal of the “Judgment” (defined below); (ii) the date of final dismissal with
17 prejudice of the last pending appeal from the Judgment; or (iii) if no appeal is filed,
18 the expiration date of the time for filing or noticing any form of valid appeal from
19 the Judgment. Notwithstanding the foregoing, any proceeding or order, or any
20 appeal or petition for a writ pertaining solely to the award of attorneys’ fees,
21 litigation costs, and/or Enhancement Payments shall not, by itself, in any way
22 delay or preclude the Judgment from becoming Final.

23 1.16 **“FLSA Collective Group”** is defined in Section 2.2.

24 1.17 **“Gross Settlement Amount”** is defined in Section 3.1.

25 1.18 **“Judgment”** means the judgment to be rendered by this Court
26 finally approving this Agreement and dismissing the claims against the Wachovia
27 Defendants in the Litigation with prejudice. A copy of the Judgment that the
28 Settling Parties will propose to the Court is attached hereto as Exhibit “B.”

1 1.19 “**Last Known Address**” or “**Last Known Addresses**” means
2 the most recently recorded mailing address for a Class Member as such
3 information is contained in the employment or personnel records maintained by
4 Wachovia Securities.

5 1.20 “**Litigation**” refers to multiple lawsuits by the Named Plaintiffs
6 that allege claims against the Wachovia Defendants including the following: (a)
7 all actions transferred to the District Court for the Central District of California by
8 the Judicial Panel on Multidistrict Litigation through its orders dated December 22,
9 2006, January 4, 2007, and July 20, 2007 that have been consolidated in the action
10 styled In re Wachovia Securities, LLC Wage and Hour Litigation, MDL No. 07-
11 1807 DOC (C.D. Cal.); (b) all “tag-along” actions as defined by Rule 1.1 of the
12 Rules of Procedure of the Judicial Panel on Multidistrict Litigation, and all
13 “Related Actions” as defined by the Court’s September 6, 2007 Order (Dkt. No.
14 75), alleging claims against the Wachovia Defendants that have been or could have
15 been consolidated with the action styled In re Wachovia Securities, LLC Wage and
16 Hour Litigation, MDL No. 07-1807 DOC (C.D. Cal.) (e.g., Cochran v. Wachovia
17 Sec., LLC, et al., NO. 07-CV-505 (S.D. Ohio) and Good v. Wachovia Corp., et al.,
18 No. SA CV07-5509 DOC (RNBx)); (c) all other cases alleging claims against the
19 Wachovia Defendants that have been filed in or removed to the District Court for
20 the Central District of California and that have been assigned to Judge Carter,
21 regardless of whether they have become part of the action styled In re Wachovia
22 Securities, LLC Wage and Hour Litigation, MDL No. 07-1807 DOC (C.D. Cal.);
23 and (d) Howard Schneider, et al. v. First Union Securities, Inc.; Jeffrey Bouchard;
24 and Wachovia Securities, LLC, No. BC282338 (Cal. Super. Ct.), except as
25 provided in Section I.4.

26 1.21 “**Net Settlement Amount**” is defined in Section 3.2.5.
27
28

1 1.22 **“Non-Settlement Class Members”** are those Rule 23 Class
2 Members who timely submit Qualifying Exclusion Forms and those FLSA
3 Collective Group Members who fail to timely submit Qualifying Claim Forms.

4 1.23 **“Notice Approval Date”** means that date on which the Court
5 approves the mailing of the Class Notice.

6 1.24 **“Notice Mailing Deadline”** shall be the date forty-five (45)
7 days after the Notice Approval Date.

8 1.25 **“Notice Response Deadline”** shall be the date sixty (60) days
9 after the Class Notice is mailed to the Class Members by the Claims Administrator.

10 1.26 **“Participating Claimants”** shall mean (a) each Class
11 Representative, except for Named Plaintiffs Mary O’Reilly, Michael DiLustro, and
12 Paul Firth; and (b) all Class Members who return a Qualifying Claim Form to the
13 Claims Administrator. Submission of a Qualifying Claim Form shall constitute
14 binding and irrefutable evidence that the Participating Claimant desires, intended,
15 and did opt in to the FLSA opt-in portion of the Litigation and associated
16 settlement.

17 1.27 **“Parties”** shall mean the Class Representatives, Class
18 Members, and Wachovia Securities.

19 1.28 **“Person”** means a natural person.

20 1.29 **“Prudential Defendants”** are defined in Section I.4.

21 1.30 **“Qualifying Claim Form”** means a Claim Form that is fully
22 completed, properly executed, and timely returned to the Claims Administrator.

23 1.31 **“Qualifying Exclusion Form”** means an Exclusion Form that
24 is fully completed, properly executed, and timely returned to the Claims
25 Administrator.

26 1.32 **“Qualifying Work Month”** shall mean each month in which a
27 Class Member worked at least one day in a Covered Position within the applicable
28 Class Period.

1 1.33 “**Reasonable Address Verification Measure**” shall mean the
2 utilization of the National Change of Address Database maintained by the United
3 States Postal Service as well as any other database reasonably used by the Claims
4 Administrator to review the accuracy of and, if possible, update a mailing address.

5 1.34 “**Released Claims**” is defined in Section 9.1.

6 1.35 “**Rule 23 Class Members**” is defined in Section 2.1.

7 1.36 “**Settlement Class**” means the collective group of (a) all Class
8 Representatives; (b) all FLSA Collective Group Members who submit Qualifying
9 Claim Forms; and (c) all Rule 23 Class Members who do not submit Qualifying
10 Exclusion Forms, whether they become Participating Claimants or not. All
11 members of the Settlement Class will become bound by the Judgment.

12 1.37 “**Settlement Class Member**” means any person who is a
13 member of the Settlement Class.

14 1.38 “**Settlement Effective Date**” means the date on which the
15 Court’s Judgment becomes Final.

16 1.39 “**Settlement Escrow Account**” is defined in Section 3.1.

17 1.40 “**Settlement Formula**” is defined in Section 3.6.

18 1.41 “**Settling Parties**” is defined in the introductory paragraph of
19 this Agreement.

20 1.42 “**State Claims Release**” is the release of certain wage and hour
21 claims under state law, as described in Section 9.1.

22 1.43 “**Tier 1 States**” and “**Tier 2 States**” are defined in Section 3.6.

23 1.44 “**Tolling Agreement**” means the Settling Parties’ agreement to
24 toll the statute of limitations as of May 21, 2008 on the potential FLSA claims in
25 this Litigation of those Class Members who consented to join the Litigation before
26 December 31, 2008.

27

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1 1.45 “**Updated Address**” means a mailing address that was updated
2 via a Reasonable Address Verification Measure or via an updated mailing address
3 provided by the United States Postal Service or a Class Member.

4 1.46 “**Valid Additional Work Months**” is defined in Section 3.7.1.

5 1.47 “**Wachovia Securities,**” or the “**Wachovia Defendants**”
6 means, collectively, Wachovia Corporation, Wachovia Securities, LLC, and First
7 Union Securities, Inc.

8 1.48 “**Wachovia Securities Releasees**” means Wachovia Securities,
9 each of their affiliates (including without limitation parents and subsidiaries
10 including, but not limited to, Wachovia Corporation and Wells Fargo &
11 Company), and all of their predecessors, successors, divisions, joint ventures and
12 assigns, and each of these entities’ past or present directors, officers, employees,
13 partners, members, principals, agents, ERISA plans, ERISA plan administrators,
14 insurers, co-insurers, re-insurers, shareholders, attorneys, personal or legal
15 representatives. Notwithstanding the foregoing, “Wachovia Securities Releasees”
16 does not include the Prudential Defendants or any directors, officers, employees,
17 partners, or members of the Prudential Defendants.

18 2. **Certification Of A Rule 23 Class And Collective Group For**
19 **Settlement Purposes Only**

20 2.1 For purposes of this Agreement only, the Settling Parties
21 stipulate to the certification of a class under Rule 23 of the Federal Rules of Civil
22 Procedure which shall consist of persons currently or formerly employed by the
23 Wachovia Defendants in Covered Positions in California, Illinois, Minnesota, New
24 Jersey, New York, Ohio, and Pennsylvania (the “Rule 23 Class”) during the
25 applicable Class Periods. Rule 23 Class Members who return a Qualifying Claim
26 Form and, thereby, become Participating Claimants, shall be bound by the Court’s
27 Judgment, including the State Claims Release and the Federal Claims Release.
28 Rule 23 Class Members who return a Qualifying Exclusion Form shall not be

1 bound by the Court's Judgment, and shall not be bound by the State Claims
2 Release or the Federal Claims Release. Rule 23 Class Members who do not submit
3 a Qualifying Exclusion Form, and do not submit a Qualifying Claims Form, shall
4 be bound by this Agreement and the Court's Judgment, including the State Claims
5 Release, but shall not be bound by the Federal Claims Release.

6 2.2 The Parties also agree to certification of a collective group
7 under § 16(b) of the FLSA (the "FLSA Collective Group"). The FLSA Collective
8 Group shall consist of all persons, currently or formerly employed by the
9 Wachovia Defendants in Covered Positions anywhere within the United States,
10 who have filed a Qualifying Claim Form in this action, and, thereby, become
11 Participating Claimants. FLSA Collective Group Members shall be bound by the
12 Court's Judgment, including the State Claims Release and the Federal Claims
13 Release. Persons who are, or were, employed in Covered Positions outside of
14 California, Illinois, Minnesota, New Jersey, New York, Ohio or Pennsylvania
15 during the applicable period, but do not submit a Qualifying Claim Form in
16 response to the Notice, will be subject to neither the State Claims Release nor the
17 Federal Claims Release with respect to those Qualifying Work Months that they
18 worked outside of California, Illinois, Minnesota, New Jersey, New York, Ohio or
19 Pennsylvania.

20 3. **Settlement Payments**

21 3.1 No later than thirty (30) days following the Notice Approval
22 Date, Wachovia Securities shall deposit the total sum of thirty-nine million dollars
23 and no cents (\$39,000,000.00) into an escrow account ("Settlement Escrow
24 Account") maintained at an institution owned or controlled by, or affiliated with,
25 Wachovia Securities or Wells Fargo. Interest will accrue for the benefit of the
26 Class from the date of entry of the Judgment and, assuming the Settlement
27 Effective Date occurs, shall be allocated to the Net Settlement Amount (defined
28 below), and the potential settlement amounts for each individual Participating

1 Claimant shall be re-calculated accordingly. Any interest accrued prior to the
2 Court's entry of Judgment shall belong to Wachovia Securities. The
3 \$39,000,000.00 sum shall be referred to as the "Gross Settlement Amount."

4 3.2 The Gross Settlement Amount will be allocated as follows:

5 3.2.1 up to 25% of the Gross Settlement Amount may be paid
6 in attorneys' fees to Class Counsel, subject to Court approval. In addition, Class
7 Counsel may apply to the Court for reimbursement of reasonable litigation costs.
8 Any such reimbursement shall be in addition to the attorneys' fees approved by the
9 Court and shall be paid from the Gross Settlement Amount;

10 3.2.2 Class Representative enhancement payments of
11 \$15,000.00 may be paid to each Class Representative, except for Named Plaintiffs
12 Mary O'Reilly, Michael DiLustro, and Paul Firth, (for a total of \$480,000.00)
13 ("Enhancement Payments"), subject to Court approval;

14 3.2.3 a reasonable amount, estimated to be approximately
15 \$300,000.00, shall be paid to the Claims Administrator to administer this
16 Agreement;

17 3.2.4 a payment to the California Labor Workforce
18 Development Agency in association with the release of claims under California
19 Labor Code section 2698 et seq., which shall be in the amount of \$30,000.00; and

20 3.2.5 the remaining sum shall be referred to as the "Net
21 Settlement Amount." Specifically, the Net Settlement Amount shall be the Gross
22 Settlement Amount plus post-Judgment interest minus the sum of the amounts set
23 forth above in subsections 3.2.1, 3.2.2., 3.2.3, and 3.2.4. The Net Settlement
24 Amount will be made available for claims made by Participating Claimants
25 pursuant to the terms of this Agreement.

26 3.3 The Wachovia Defendants will not oppose Co-Lead Counsel's
27 application to the Court for attorneys' fees and costs as described above in Section
28 3.2.1. No later than ten (10) court days following the Settlement Effective Date,

1 and only if the Settlement Effective Date occurs, the Claims Administrator shall
2 pay to Co-Lead Counsel, jointly, from the Gross Settlement Amount the attorneys'
3 fees and costs that are awarded by the Court. Co-Lead Counsel shall allocate the
4 attorneys' fees and costs among Class Counsel. All attorneys' fees and costs will
5 be paid from the Gross Settlement Amount, and no attorneys' fees or costs beyond
6 the amounts provided for in this Agreement and approved by the Court's Judgment
7 will be paid to any attorney representing any Named Plaintiff or Class Member.
8 The Claims Administrator will issue to the Named Plaintiffs' Co-Lead Counsel
9 IRS Forms 1099 with respect to their awarded attorneys' fees and costs. If the
10 Court awards Class Counsel less than twenty-five percent (25%) of the Gross
11 Settlement Amount in attorneys' fees, the remainder shall remain part of the Gross
12 Settlement Amount. The Claims Administrator shall not disburse any attorneys'
13 fees or costs unless and until the Named Plaintiffs' Co-Lead Counsel have
14 provided the Claims Administrator with appropriate IRS Forms W-9 for such
15 allocation. The Parties agree that any dispute among Named Plaintiffs, Class
16 Counsel, Class Members, and counsel for the Class Members regarding the
17 allocation of the attorneys' fees and costs among counsel for Named Plaintiffs and
18 Class Members shall not involve the Wachovia Defendants, shall not invalidate
19 this Agreement, and shall not delay or preclude the Judgment from becoming
20 Final.

21 3.4 The Wachovia Defendants will not oppose Named Plaintiffs'
22 request to the Court for Enhancement Payments, in addition to any payment they
23 each may otherwise receive as Class Members. If the Court awards the Class
24 Representatives less than \$15,000.00 each, the remainder shall be allocated to the
25 Net Settlement Amount. The Claims Administrator will issue an IRS Form 1099
26 to each Named Plaintiff for these Enhancement Payments.

27 3.5 The Wachovia Defendants shall pay to Participating Claimants
28 a minimum of seventy percent (70%) of the Net Settlement Amount. Accordingly,

1 if the Participating Claimants claim less than 70% of the total Net Settlement
2 Amount, then the amount due to each Participating Claimant under the Settlement
3 Formula shall be increased, on a *pro rata* basis according to each Participating
4 Claimant's number of Qualifying Work Months, so that the total amount paid
5 collectively to the Participating Claimants is equal to seventy percent (70%) of the
6 Net Settlement Amount. Any amounts unclaimed by Participating Claimants over
7 seventy percent (70%) of the Net Settlement Amount shall not be paid and shall
8 instead remain the property of or revert to Wachovia Securities.

9 3.6 The Claims Administrator shall determine each Participating
10 Claimant's share of the Net Settlement Amount by using the following "Settlement
11 Formula":

12 California shall be treated separately from the other states. New
13 York, New Jersey and Pennsylvania shall be referred to as "Tier 2
14 States." The remaining 46 states, Washington, D.C., and U.S.
15 territories shall be referred to as "Tier 1 States." The "Base Monthly
16 Payment" shall be calculated by dividing the Net Settlement Amount
17 by the sum of the Qualifying Work Months (previously defined in
18 Section 1.32) worked in Tier 1 States plus 1.68 times the Qualifying
19 Work Months worked in Tier 2 States plus 2.5 times the Qualifying
20 Work Months worked in California. Participating Claimants who
21 worked in California shall receive for each Qualifying Work Month
22 worked in California a settlement payment equal to 2.5 times the Base
23 Monthly Payment, less applicable taxes and withholdings as described
24 in Sections 3.8, 4.1, 4.2 and 4.3. Participating Claimants who worked
25 in a Tier 2 State shall receive for each Qualifying Work Month
26 worked in a Tier 2 State a settlement payment equal to 1.68 times the
27 Base Monthly Payment, less applicable taxes and withholdings as
28 described in Sections 3.8, 4.1, 4.2 and 4.3. Participating Claimants

1 who worked in a Tier 1 State shall receive for each Qualifying Work
2 Month worked in a Tier 1 State a settlement payment equal to the
3 Base Monthly Payment, less applicable taxes and withholdings as
4 described in Sections 3.8, 4.1, 4.2 and 4.3.

5 To clarify the above, the Parties understand and agree that the Base Monthly
6 Payment shall be calculated so that if all Class Members become Participating
7 Claimants, then the full Net Settlement Amount shall be paid to the Class
8 Members, but if fewer than 100% of the Class Members become Participating
9 Claimants, then the Wachovia Defendants will pay less than the total Net
10 Settlement Amount to all Participating Claimants.

11 3.7 The Parties agree to a process that will confirm the validity of
12 the Qualifying Work Months. The process is as follows:

13 3.7.1 Any additional claimed work months validated pursuant
14 to section 6.5 of this Agreement shall be deemed Valid Additional Work Months.

15 3.7.2 Any individual who does not receive a Claim Form
16 because he or she is not included in a Covered Position but who claims that he or
17 she should be a Class Member, must present evidence and information
18 demonstrating that he or she should be included in the settlement. If the Parties
19 agree that the evidence and information is credible, and/or if the Court authorizes
20 the individual's participation in the settlement, then the additional months
21 determined to have been worked by such individual will be deemed Valid
22 Additional Work Months.

23 3.7.3 Within 20 days after the Notice Response Deadline, the
24 Parties will confer to determine whether the Valid Additional Work Months create
25 a variance, derived by dividing Valid Additional Work Months by Qualifying
26 Work Months, that requires the Parties to take additional measures. If the Valid
27 Additional Work Months create a variance, then the Parties agree to the following,
28 subject to Section 3.7.4 below:

1 (a) If less than 70% of the total Net Settlement
2 Amount, before giving effect to this Section, has been claimed by Participating
3 Claimants, then the Valid Additional Work Months will be paid at the Base
4 Monthly Payment, until 70% of the total Net Settlement Amount is paid. Any
5 additional Valid Additional Work Months will be paid according to the provisions
6 of subsection (b) hereof.

7 (b) If 70% or more of the total Net Settlement
8 Amount, before giving effect to this Section, has been claimed by Participating
9 Claimants, or if, after giving effect to subsection (a) of this Section, 70% or more
10 of the total Net Settlement Amount has been claimed by Participating Claimants,
11 but some Valid Additional Work Months remain unpaid, then,

12 (i) If the variance is 3.5% or less, the Base
13 Monthly Payment will be recalculated by including the Valid Additional Work
14 Months (and/or the unpaid Valid Additional Work Months, as the case may be) in
15 the divisor described in Section 3.6 above, and Class Participants will be paid
16 pursuant to the Settlement Formula in Section 3.6 using the recalculated Base
17 Monthly Payment, and,

18 (ii) If the variance is greater than 3.5% and less
19 than 10%, then the Valid Additional Work Months (and/or the unpaid Valid
20 Additional Work Months, as the case may be) will be paid from the Net Settlement
21 Amount at the Base Monthly Payment without recalculation.

22 (c) If, after 70% or more of the total Net Settlement
23 Amount has been claimed by Participating Claimants, the variance is greater than
24 10%, then the Parties shall meet and confer to determine whether the Wachovia
25 Defendants will pay for the Valid Additional Work Months at the applicable Base
26 Monthly Payment value or, alternatively, whether the Parties will terminate this
27 Agreement, but either Party shall have the discretion to terminate this Agreement.
28

1 3.7.4 If, in any event, the total amount that the Wachovia
2 Defendants would pay exceeds the Gross Settlement Amount of \$39,000,000, then
3 the Parties shall meet and confer to determine whether the Wachovia Defendants
4 will pay the excess or the Parties will take other action, but absent a mutually
5 agreed-upon solution, the Wachovia Defendants shall have the absolute discretion
6 to terminate this Agreement.

7 3.8 The Wachovia Defendants, themselves or through the Claims
8 Administrator, and according to the terms, conditions and procedures set forth in
9 Sections 4.1, 4.2, 4.3, 8.1, and 8.2 of this Agreement, shall pay each Participating
10 Claimant his or her share of the Net Settlement Amount following the adjustment
11 of the Net Settlement Amount for post-Judgment interest. To the extent
12 administratively convenient, these payments shall be made via one check to each
13 Participating Claimant. The payments to each Participating Claimant shall be
14 allocated for reporting reasons as set forth below:

15 3.8.1 Fifty percent of the initial amount due under the
16 Settlement Formula shall be deemed payment in settlement of claims for unpaid
17 wages; and

18 3.8.2 The Participating Claimant's share of the post-Judgment
19 interest accrued on the Gross Settlement Amount and fifty percent of the amount
20 initially due under the Settlement Formula shall be deemed payment in settlement
21 of claims for penalties; punitive damages; liquidated damages; business costs,
22 staffing, expense, and error reimbursements; interest; and all other non-wage
23 recovery.

24 **4. Taxes**

25 4.1 The Claims Administrator is responsible for tax withholdings,
26 remitting funds to the appropriate taxing authorities, and satisfying all associated
27 tax reporting, return, and filing requirements.

28

1 4.2 Those payments allocated to the settlement of claims for unpaid
2 wages (a) shall be subject to required withholdings and deductions, and so the net
3 amounts payable will be less than the gross amounts; and (b) shall be reported in
4 the year of payment as wage income to the Participating Claimant on a Form W-2
5 or analogous form. Each Participating Claimant's *pro rata* share of the post-
6 Judgment interest accrued on the Gross Settlement Amount plus those payments
7 allocated to each Participating Claimant's non-wage claims, including without
8 limitation claims for penalties, punitive damages, liquidated damages,
9 reimbursement, interest and other non-wage recovery (a) shall not be subject to
10 withholdings and deductions, and so the net amounts payable will be equal to the
11 gross amounts; and (b) shall be reported in the year of payment as non-wage
12 income to the Participating Claimants on a Form 1099 or analogous form.
13 Wachovia Securities shall also pay the employer's share of payroll taxes, which
14 payment shall be in addition to the Gross Settlement Amount. Other than as set
15 forth above, Wachovia Securities will not, unless otherwise required by law, make
16 any deductions, withholdings or additional payments, including without limitation,
17 medical or other insurance payments or premiums, employee 401(k) contributions
18 or matching employer contributions, or charity withholdings from the settlement
19 payments to each Participating Claimant. Any amount paid to Participating
20 Claimants shall not create any credit or otherwise affect the calculation of any
21 deferred compensation, benefit, or other compensation plan provided by the
22 Wachovia Defendants.

23 4.3 Other than the withholding and reporting requirements set forth
24 in Section 4.2, Participating Claimants shall be solely responsible for the reporting
25 and payment of any federal, state, and/or local income or other tax or any other
26 withholdings, if any, on any of the payments made pursuant to this Agreement.
27 The Wachovia Defendants make no representations and it is understood and agreed
28 that the Wachovia Defendants have made no representations as to the taxability of

1 any portions of the settlement payments to any Participating Claimants, the
2 payment of any costs or an award of attorneys' fees, or any payments to the Class
3 Representatives. The Class Notice will advise Class Members to seek their own
4 tax advice prior to responding to the Class Notice, and the Class Representatives
5 and Class Counsel agree that Class Members will have an adequate opportunity to
6 seek tax advice prior to responding to the Class Notice.

7 **5. Court Approval Of Notice To The Class And A Settlement**
8 **Hearing**

9 5.1 On or before April 6, 2009, the Class Representatives and
10 Wachovia Securities, through their counsel of record in the Litigation, shall file
11 this Agreement with the Court and jointly move for preliminary approval of this
12 Agreement. Via this submission, and a supporting motion, the Settling Parties,
13 through their counsel of record, will request that the Court (a) enter an order
14 preliminarily approving this Agreement, including a proposed draft of the Class
15 Notice; (b) approve the mailing of the Class Notice; and (c) enter an order
16 prohibiting Class Members from filing any new actions asserting claims against the
17 Wachovia Defendants similar to those presented in the Litigation and which would
18 otherwise constitute Released Claims under this Agreement until the Court's
19 Judgment becomes Final.

20 5.2 Subject to Court availability, the Class Representatives and
21 Wachovia Securities shall endeavor to notice the joint motion described in Section
22 5.1 for a hearing before the Court on or before April 27, 2009. Failure of the Court
23 to grant preliminary approval of this Agreement without material changes will be
24 grounds for Wachovia Securities or the Class Representatives to terminate the
25 settlement and the terms of this Agreement. Changes to the amount of attorneys'
26 fees, litigation costs and/or Enhancement Payments shall not be deemed material
27 changes and shall not constitute valid grounds for the Settling Parties to terminate
28 the settlement and/or this Agreement. Failure of the Court to enjoin Class

1 Members from filing new actions asserting Released Claims also shall not be
2 deemed a material change to this Agreement and shall not constitute valid grounds
3 for the Settling Parties to terminate it.

4 5.3 Not later than ten (10) calendar days following the filing of this
5 Agreement and the motion for preliminary approval, the Wachovia Defendants,
6 themselves or through the Claims Administrator, shall notify the U.S. Attorney
7 General, U.S. Department of Labor, and the attorneys general and departments of
8 labor (or functional equivalent, regardless of title) in each of the states of the
9 existence of this Agreement; the Wachovia Defendants, themselves or through the
10 Claims Administrator, shall also issue a supplemental notice not later than ten (10)
11 calendar days following the Notice Approval Date and not later than ten (10)
12 calendar days following the Settlement Effective Date. Wachovia Securities will
13 file with this Court the proof of service of the CAFA notice (and only the proof of
14 service) within five (5) business days after each instance in which such notice is
15 given. Wherever necessary or appropriate, Wachovia Securities' counsel will
16 assist the Claims Administrator by providing information that is necessary for the
17 preparation of the notice required by this Section. Class Counsel will cooperate
18 with the Wachovia Defendants in their efforts to fulfill their CAFA notice
19 obligations, and Class Counsel will provide assistance to the Claims Administrator
20 and the Wachovia Defendants if such assistance becomes necessary for the
21 Wachovia Defendants to fulfill their CAFA notice obligations. The Wachovia
22 Defendants, however, shall have sole discretion to determine the substance of the
23 CAFA notices. The first CAFA notice, to be provided not later than ten (10)
24 calendar days following the filing of this Agreement and the motion for
25 preliminary approval, shall include the following information, to the extent then
26 available:

27 5.3.1 The Consolidated Class Action Complaint filed in the
28 Litigation;

1 5.3.2 A schedule of upcoming hearing dates, if any, in the
2 Litigation;

3 5.3.3 The Class Notice;

4 5.3.4 A true and correct copy of this Agreement;

5 5.3.5 Any other agreements between Class Counsel and
6 Wachovia Securities' counsel;

7 5.3.6 An estimate of the number of Class Members (and their
8 names, if feasible) who reside in the jurisdiction of the entity or agency receiving
9 the notice;

10 5.3.7 The estimated proportionate share of the entire settlement
11 being offered to the individuals (prior to adjustments for post-Judgment interest)
12 who reside in the jurisdiction of the entity or agency receiving the notice; and

13 5.3.8 Any written judicial opinion or order of this Court
14 relating to items in Subsections 5.3.3 through 5.3.7.

15 The contents of the supplemental CAFA notices -- submitted not later than
16 ten (10) calendar days following the Notice Approval Date and not later than ten
17 (10) calendar days following the Settlement Effective Date -- will be determined by
18 the Wachovia Defendants based on the circumstances at the time the notices are
19 provided. Notwithstanding the foregoing, Wachovia Securities understands and
20 agrees that it is ultimately responsible for notifying the appropriate federal and
21 state officials pursuant to 28 U.S.C. § 1715. Class Counsel agree that the process
22 described above complies with 28 U.S.C. § 1715.

23 5.4 If the Court grants preliminary approval of this Agreement and
24 authorizes mailing of the Class Notice, then at the final settlement approval
25 hearing, the Class Representatives and the Wachovia Defendants, through their
26 counsel of record, shall address any written objections from Class Members or any
27 concerns from Class Members who attend the hearing as well as any concerns of
28 the Court, if any, and shall and hereby do, unless provided otherwise in this

1 Agreement, stipulate to final approval of this Agreement and entry of Judgment by
2 the Court.

3 **6. Notice To Class Members**

4 6.1 If, by entering an order preliminarily approving this Agreement
5 and the Class Notice, the Court provides authorization to send the Class Notice,
6 the Claims Administrator will mail the Class Notice to all Class Members at their
7 Last Known Addresses. The Claims Administrator shall mail the Class Notice via
8 first class mail through the United States Postal Service, postage pre-paid.

9 6.2 The Claims Administrator shall mark the Class Notice and its
10 envelope or covering to denote the return address of the Claims Administrator.
11 The envelope or covering containing the Class Notice shall also bear the following
12 note: "Important Claim Form Enclosed." The Claims Administrator shall include
13 only the Class Notice and its two attachments (the Claim Form and Exclusion
14 Form) in this mailing.

15 6.3 Wachovia Securities shall prepare the name, Last Known
16 Address, Social Security Numbers, and number of Qualifying Work Months for
17 each jurisdiction for each Class Member for the Claims Administrator so that the
18 Claims Administrator can engage in the processing and mailing of each Class
19 Notice. Wachovia Securities will provide this information to the Claims
20 Administrator only within thirty (30) days after the Court grants preliminary
21 approval of this Agreement. The Claims Administrator will provide a verified
22 notice to Wachovia Securities and to the Named Plaintiffs' Co-Lead Counsel that,
23 without redistributing the Class Members' information, confirms that it has
24 received all of this information.

25 6.4 Prior to mailing the Class Notice to each Class Member, the
26 Claims Administrator shall undertake a Reasonable Address Verification Measure
27 to ascertain the current accuracy of the Last Known Address of each Class
28 Member. To the extent this process yields an Updated Address, that Updated

1 Address shall replace the Last Known Address for purposes of this Agreement and
2 for subsequent mailings in particular.

3 6.5 Prior to mailing the Class Notice to each Class Member, and to
4 the extent possible within the requisite deadlines, the Claims Administrator shall
5 include in the space provided on each Class Notice the number of Qualifying Work
6 Months in each jurisdiction for each Class Member. Clear instruction in the Class
7 Notice will provide that if a Class Member disagrees with the number of
8 Qualifying Work Months pre-printed on his or her Claim Form, the Class Member
9 must write his or her correct dates of employment in each Covered Position during
10 the Covered Period and provide documents (e.g., check stubs, cancelled checks,
11 payroll documents, or registration records) evidencing his or her claim. The
12 Qualifying Work Months listed on the Claim Form are presumed to be accurate
13 unless the Class Member demonstrates otherwise with documentation. If the Class
14 Member disagrees with the number of Qualifying Work Months on his or her
15 Claim Form and provides documentation to support his or her claim for a different
16 total number of Qualifying Work Months, Class Counsel and counsel for
17 Wachovia Securities will meet and confer to resolve the issue on behalf of the
18 Class Member and Wachovia Securities. If the Parties cannot agree on the Class
19 Member's number of Qualifying Work Months, the Parties shall submit the issue
20 to the Court, the Class Member shall have the burden of proving that the number of
21 Qualifying Work Months on his or her Claim Form is wrong, and the Court shall
22 have the final authority to decide the number of Qualifying Work Months worked
23 by the Class Member.

24 6.6 Unless the Settling Parties agree otherwise in writing or the
25 Court so orders, the Claims Administrator shall mail each of the Class Notices to
26 the Last Known Addresses of the Class Members no later than the Notice Mailing
27 Deadline.

28

1 6.7 All costs of the mailing shall be included in the claims
2 administration costs set forth in Section 3.2.3, including the cost of the envelope in
3 which the Class Notice will be mailed, the cost of reproducing the Class Notice,
4 and the cost of postage to send the Class Notice. The Claims Administrator shall
5 include no other materials besides the Class Notice (including the Claim Form and
6 Exclusion Form) in this mailing, and neither the Claims Administrator nor any
7 Party or counsel for the Parties shall send any other materials to Class Members
8 except as provided in Sections 6.9, 6.10, and 6.11 or in response to a specific
9 submission or inquiry from a Class Member.

10 6.8 Unless the Claims Administrator receives a Class Notice
11 returned from the United States Postal Service for reasons discussed below in this
12 Section, that Class Notice shall be deemed mailed and received by the Class
13 Member to whom it was sent. In the event that subsequent to the first mailing of a
14 Class Notice and prior to the Notice Response Deadline, the United States Postal
15 Service returns that Class Notice to the Claims Administrator with a forwarding
16 address for the recipient, the Claims Administrator shall re-mail the Class Notice to
17 that address, the Class Notice will be deemed mailed at that point, and the
18 forwarding address shall be deemed the Updated Address for that Class Member.
19 In the event that subsequent to the first mailing of a Class Notice, and at least ten
20 (10) business days prior to the Notice Response Date, the United States Postal
21 Service returns that Class Notice to the Claims Administrator because the address
22 of the recipient is no longer valid, the Claims Administrator shall perform a
23 standard skip trace, utilizing the Class Member's Social Security Number, in an
24 effort to ascertain the current address of the particular Class Member in question
25 and, if such an address is ascertained, the Claims Administrator will promptly re-
26 send the Class Notice. If the Claims Administrator can obtain no Updated Address
27 for that Class Member, the Class Member will be considered a Non-Settlement
28 Class Member, will receive no payment under this Agreement, and will not be

1 bound by this Agreement or the Court's Judgment if it becomes Final. Nothing in
2 this Section shall be construed to extend the Notice Response Deadline for any
3 Class Member.

4 6.9 To the extent a Class Member has not submitted to the Claims
5 Administrator a Qualifying Claim Form, a Qualifying Exclusion Form, or an
6 objection to this Agreement by the date that is twenty (20) days before the Notice
7 Response Deadline, the Claims Administrator shall send that Class Member a
8 postcard: (a) referencing the name of the Litigation; (b) stating that the Class
9 Member received a notice in this action; (c) providing the address for the Claims
10 Administrator; (d) stating the Notice Response Deadline; and (e) advising the Class
11 Member how to contact the Claims Administrator to receive an additional copy of
12 the Class Notice by mail or e-mail. The postcard shall not contain additional
13 information or statements. Nothing in this Section 6.9 shall be construed to extend
14 the Notice Response Deadline for any Class Member.

15 6.10 If ten (10) calendar days prior to the Notice Response Deadline
16 less than 70% of the total Net Settlement Amount has been claimed by
17 Participating Claimants, Wachovia Securities will provide the Claims
18 Administrator with e-mail addresses, if known, for those Class Members who have
19 not responded to the Class Notice either by mailing a Claim or Exclusion Form to
20 the Claims Administrator or by objecting to this Agreement. The Claims
21 Administrator shall send all such non-responsive Class Members a form e-mail:
22 (a) referencing the name of the Litigation; (b) stating that the Class Member was
23 mailed a notice in this action; (c) providing that a new Class Notice can be
24 requested by responding to the Claims Administrator; and (d) stating that if the
25 Class Member has questions about the case, he or she (i) can contact Class Counsel
26 at the following e-mail addresses: smith@whafh.com or
27 nfineman@cpmlegal.com, or (ii) can respond to the Claims Administrator's e-mail
28 with a request that the Class Member's contact information be provided to Class

1 Counsel. The e-mail from the Claims Administrator to the non-responsive Class
2 Members shall not contain additional information or statements. Nothing in this
3 Section 6.10 shall be construed to extend the Notice Response Deadline for any
4 Class Members.

5 6.11 To the extent that the Class Member has submitted a Claim
6 Form or Exclusion Form that does not constitute a Qualifying Claim Form or
7 Qualifying Exclusion Form, the Claims Administrator shall send a Cure Letter to
8 such Class Member informing him or her that the Claim Form or Exclusion Form
9 is defective and must be cured to become valid. The Claims Administrator must
10 postmark the Cure Letter as promptly as feasible upon receipt of any timely but
11 defective Claim Form or Exclusion Form. The Cure Letter shall remind the Class
12 Member of the Notice Response Deadline, which will remain unchanged. If a
13 Class Member responds to a Cure Letter by filing a late or defective Claim Form or
14 Exclusion Form, then the Claims Administrator shall have no further obligation to
15 give notice of a need to cure.

16 6.12 Wachovia Securities shall not retaliate against Class Members
17 who file Claim Forms or Exclusion Forms or object to the settlement. Wachovia
18 Securities also will not suggest to any Class Member that the filing of a Claim
19 Form, Exclusion Form, or objection to the settlement will have a detrimental or
20 beneficial effect upon the terms and conditions of the Class Member's employment
21 with Wachovia Securities.

22 **7. Responses To The Notice And Motion For Final Approval**

23 7.1 Class Members have the option to participate in this Lawsuit at
24 their own expense by obtaining their own attorney(s). Class Members who choose
25 this option will be responsible for any attorney fees or costs incurred as a result of
26 this election. The Class Notice will advise Class Members of this option.

27 7.2 Class Members who are part of the Rule 23 Class may elect to
28 "opt out" of the Class and thus exclude themselves from the Litigation and the

1 Settlement Class. Rule 23 Class Members who wish to exercise this option must
2 fully complete, execute, and mail, per the instructions therein, the form entitled
3 "Exclusion Form" attached to the Class Notice as Attachment 2. If the Claims
4 Administrator does not receive a Qualifying Exclusion Form from a Rule 23 Class
5 Member postmarked on or before the Notice Response Deadline, then that Class
6 Member will be deemed to have forever waived his or her right to opt out of the
7 Settlement Class. Rule 23 Class Members who properly and timely submit
8 Qualifying Exclusion Forms shall have no further role in the Litigation, and for all
9 purposes they shall be regarded as if they never were a Party to this Litigation.
10 They shall not be entitled to any benefit as a result of this Litigation, including
11 without limitation, any tolling of any pertinent statute of limitations, provided that
12 any Class Member who is part of the Tolling Agreement entered between the
13 Settling Parties shall have his or her FLSA claims tolled from May 21, 2008 until
14 the date on which the Judgment becomes Final.

15 7.3 Rule 23 Class Members who do not opt out of the Class, and
16 FLSA Collective Group Members, may object to this Agreement by filing a written
17 objection with the Court with copies to Class Counsel, Wachovia Securities'
18 counsel, and the Claims Administrator by no later than the Notice Response
19 Deadline. The objection must set forth, in clear and concise terms, the legal and
20 factual arguments supporting the objection. Unless otherwise ordered by the
21 Court, Class Members shall not be permitted to speak at the final approval hearing
22 unless they have submitted a timely written objection pursuant to this Section 7.3.
23 The Class Notice shall advise Class Members of this option.

24 7.4 Any Class Member may elect to become a Participating
25 Claimant by fully completing, executing and mailing, per the instructions therein,
26 the Claim Form attached to the Class Notice as Attachment 1. Return of a Claim
27 Form to the Claims Administrator will also constitute a consent to join the
28 Litigation under 29 U.S.C. § 216(b) and become an FLSA Collective Group

1 Member. If the Claims Administrator does not receive a Qualifying Claim Form
2 from a Class Member postmarked on or before the Notice Response Deadline, then
3 that Class Member will be deemed to have forever waived his or her right to be a
4 Participating Claimant and receive payment under this Agreement. Rule 23 Class
5 Members who do not submit a Qualifying Claim Form or a Qualifying Exclusion
6 Form in a timely fashion shall be deemed Settlement Class Members, and shall be
7 subject to the Court's Judgment, including the State Claims Release; they shall not,
8 however, be subject to the Federal Claims Release. Only Participating Claimants
9 shall receive a settlement payment pursuant to this Agreement.

10 7.5 The Claims Administrator shall send to Class Members who
11 submit both Qualifying Claim Forms and Qualifying Exclusion Forms a Cure
12 Letter seeking clarification of which response they want to submit. Absent any
13 cure, they will be deemed Participating Claimants. If, however, a Class Member
14 submits both a Claim Form and an Exclusion Form and one is defective while the
15 other is not, then, absent any cure, the qualifying form shall control.

16 7.6 Class Members who, for future reference and mailings from the
17 Court or Claims Administrator, if any, wish to change the name or address listed
18 on the envelope in which the Class Notice was first mailed to them, must complete
19 the "Change of Name or Address Information" included in the Claim Form
20 attached to the Class Notice as Attachment 1.

21 7.7 If less than 70% of the total Net Settlement Amount, after
22 giving effect to Sections 3.6, 3.7.3, and 3.7.4, has been claimed by Participating
23 Claimants, the Settling Parties agree to treat a portion of the late Claim Forms, in
24 the order received, as Qualifying Claim Forms until 70% of the total Net
25 Settlement Amount has been claimed and awarded, provided that the late Claim
26 Forms meet all of the following requirements: (a) the Claims Administrator
27 receives the Claim Form before 70% of the Net Settlement Amount has been
28 claimed and awarded under this section, (b) the Claims Administrator receives the

1 Claim Form before the final approval hearing, and (c) the Claim Form would have
2 otherwise constituted a Qualifying Claim Form had it been timely submitted to the
3 Claims Administrator. Once either 70% of the total Net Settlement Amount has
4 been claimed by Participating Claimants or the Court holds the final approval
5 hearing – whichever occurs first – no untimely and otherwise qualifying submitted
6 Claim Forms will be honored except where the Class Member can prove that he or
7 she missed the Notice Response Deadline due to his or her legal incompetence, i.e.,
8 his or her incarceration or hospitalization. No extensions will be granted for
9 incompetence, however, unless first requested in writing, accompanied by proof of
10 incompetence, to the Claims Administrator or Class Counsel fewer than one
11 hundred twenty (120) days following the Notice Response Deadline. The Settling
12 Parties agree that the establishment and enforcement of the Notice Response
13 Deadline is valuable consideration to the Wachovia Defendants, and the finality
14 provided thereby is a material aspect of this Agreement. Any ruling to the contrary
15 by the Court or any ruling allowing the filing of any responses to the Class Notice
16 following the Notice Response Deadline other than as provided for in this
17 Section 7.7 shall be grounds for the Wachovia Defendants to void the Agreement.
18 The Parties agree that the purpose of this section is to describe the methodology for
19 resolving late claim form disputes, not to change any other substantive provisions
20 of this Agreement.

21 7.8 The Settling Parties agree that, unless the Court otherwise
22 orders, neither Class Members nor Class Representatives shall be entitled to
23 request a hearing as to late or defective Claim Forms or Exclusion Forms except
24 where the Class Member missed the Notice Response Deadline due to his or her
25 legal incompetence.

26 7.9 Any individual who submits a late Claim Form that is treated as
27 a Qualifying Claim Form under Section 7.7 will be a Participating Claimant.
28 Conversely, a Rule 23 Class Member who submits a late Claim Form that is not

1 treated as a Qualifying Claim Form under Section 7.7 will not be a Participating
2 Claimant, but if the Rule 23 Class Member did not timely submit a Qualifying
3 Exclusion Form, he or she will still be considered a Settlement Class Member
4 bound by this Agreement and the Judgment in this Litigation.

5 7.10 Prior to the final settlement hearing and consistent with the
6 rules imposed by the Court, the Class Representatives and Wachovia Securities
7 shall jointly move the Court for entry of Judgment. The Class Representatives and
8 Class Counsel shall be responsible for justifying the payments set forth in Section
9 3.2.1 and 3.2.2. The Settling Parties shall make all reasonable efforts to secure the
10 Judgment. If the Court rejects this Agreement, fails to enter an order finally
11 approving this Agreement, or fails to enter the Judgment, this Agreement shall be
12 void *ab initio*, and the Wachovia Defendants shall have no obligations to make any
13 payments under this Agreement.

14 **8. Timing Of Payment To Participating Claimants And Notice Of**
15 **Final Approval To Settlement Class Members**

16 8.1 The Wachovia Defendants, themselves or through the Claims
17 Administrator, shall issue to each Participating Claimant one check (or more if
18 necessary for administrative convenience) payable to the Participating Claimant for
19 the gross amount of the Participating Claimant's share, less relevant withholdings.
20 The Wachovia Defendants, themselves or through the Claims Administrator, shall
21 mail this payment to each Participating Claimant at his or her Last Known
22 Address, or Updated Address if obtained, on or before the date that is forty-five
23 (45) days after the Settlement Effective Date.

24 8.2 Checks issued to Participating Claimants pursuant to this
25 Agreement shall remain negotiable for a period of one hundred (100) days from the
26 date of mailing, and the funds associated with any checks that are not properly or
27 timely negotiated shall remain the property of the Wachovia Defendants and shall
28 not be paid to any person other than the Wachovia Defendants, provided that at

1 least 70% of the Net Settlement Amount is paid out to Participating Claimants.
2 The Settling Parties hereby agree that such funds represent settlement payments for
3 matters disputed in good faith, not uncontested wage payments, and they shall not
4 be subject to escheat rules, *cy pres*, or other distribution not provided for in this
5 Agreement. Any order or orders that result in the Wachovia Defendants not being
6 permitted to retain any unclaimed or unused settlement funds beyond those
7 required to be paid out under the terms of this Agreement will be grounds for the
8 Wachovia Defendants, in their sole discretion, to void the settlement and not make
9 any payments under this Agreement. The Wachovia Defendants, however, must
10 declare this Agreement null and void within seven (7) days from the receipt of
11 notice of entry of any order that results in such monies not being retained by the
12 Wachovia Defendants. Participating Claimants who fail to negotiate their check(s)
13 in a timely fashion shall, like all Participating Claimants and Settlement Class
14 Members, remain subject to the terms of this Agreement and the Judgment.

15 8.3 Following the mailing of the payments to Participating
16 Claimants, the Claims Administrator shall provide Class Counsel and Wachovia
17 Securities' counsel with a written confirmation of this mailing and a list of the
18 names of all Settlement Class Members.

19 **9. Release Of Claims And Covenant Not To Sue**

20 9.1 Participating Claimants (defined in Section 1.26), on behalf of
21 themselves and each of their heirs, representatives, successors, assigns, trustees,
22 beneficiaries, and attorneys, hereby release, discharge, and covenant not to sue the
23 Wachovia Securities Releasees from and with respect to any and all claims, rights,
24 demands, liabilities, and causes of action arising during the Class Periods under
25 state law ("State Claims Release"), and any and all claims, rights, demands,
26 liabilities, and causes of action arising under federal law during the Class Periods
27 ("Federal Claims Release"), regarding the following:
28

1 9.1.1 any and all claims for the failure to pay any type of
2 wages and associated penalties and/or damages for purported misclassification as
3 exempt from the overtime and minimum wage requirements under federal and state
4 laws;

5 9.1.2 any and all claims for the failure to provide meal and/or
6 rest periods;

7 9.1.3 any and all claims for violation of payroll or wage
8 record-keeping or itemization requirements, including without limitation any
9 claims concerning time records, the timing of wage payments, or the manner of
10 wage payments;

11 9.1.4 any and all claims alleging the improper assessment of
12 costs, fines, chargebacks, deductions, business expenses, or settlements on
13 employees, including, without limitation, deductions or chargebacks for trade
14 errors or support staff;

15 9.1.5 any and all claims for failure to reimburse, indemnify,
16 cover, or pay for business costs, including without limitation claims for
17 reimbursement of costs spent on or imposed for any type of business expenses,
18 trade errors, or support staff;

19 9.1.6 any and all claims for penalties, including without
20 limitation liquidated and/or punitive damages relating to all claims released in
21 subsections 9.1.1 through 9.1.5;

22 9.1.7 any and all claims for interest, costs, attorneys' fees,
23 equitable relief, or other types of available recovery relating to all claims released
24 in subsections 9.1.1 through 9.1.6; and

25 9.1.8 to the extent not covered above, any and all claims that
26 were pled or could have been pled against the Wachovia Securities Releasees in
27 the Litigation.

28

1 The Federal Claims Release includes, but is not limited to the release
2 of any and all federal wage-and-hour claims, rights, demands, liabilities and causes
3 of action of every nature and description, whether known or unknown (including
4 those within the scope of pending litigation and arbitration), pursuant to the Fair
5 Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq., and, the Portal
6 to Portal Act, 29 U.S.C. § 251 et seq., arising during the Class Periods. The State
7 Claims Release includes, but is not limited to release of any and all state law
8 claims, rights, demands, liabilities and causes of action of every nature and
9 description, whether known or unknown (including those within the scope of
10 pending litigation or arbitration), arising during the Class Periods, of the type
11 described in paragraphs 9.1.1 to 9.1.8 above, including without limitation statutory,
12 constitutional, contractual or common law claims for wages, damages, attorneys'
13 fees, unpaid costs, restitution, penalties, interest, or equitable relief.

14 9.2 Rule 23 Class Members who are not Participating Claimants,
15 *i.e.*, Rule 23 Class Members who submit neither a Qualifying Claim Form nor a
16 Qualifying Exclusion Form, shall only be bound by the State Claims Release, and
17 not the Federal Claims Release. The Wachovia Defendants, however, shall have
18 the right to request that such Rule 23 Class Members forfeit, release, and waive all
19 rights to bring or participate in a collective action under the FLSA against the
20 Wachovia Securities Releasees for the applicable Class Period covered by the
21 Litigation, though said individuals will have the right to pursue an individual
22 action under the FLSA.

23 9.3 The release of claims set forth in Section 9.1 and its
24 subsections is intended as a complete release of the Released Claims, whether
25 known or unknown, liquidated or unliquidated (including those within the scope of
26 pending litigation or arbitration). As a consequence, the Class Representatives and
27 each Settlement Class Member may later discover facts in addition to or different
28 from those which he or she now knows or believes to be true with respect to the

1 subject matter of the Released Claims, but the Class Representatives and each
2 Settlement Class Member, upon the Settlement Effective Date, shall be deemed to
3 have, and by operation of the Judgment becoming Final, shall have, fully, finally
4 and forever settled and released any and all Released Claims, known or unknown,
5 suspected or unsuspected, contingent or non-contingent, whether or not concealed
6 or hidden (including those within the scope of pending litigation or arbitration)
7 which then exist, or previously have existed upon any theory of law or equity now
8 existing or coming into existence in the future, including, but not limited to,
9 conduct which is negligent, intentional, with or without malice, or a breach of any
10 duty, law or rule, without regard to the subsequent discovery or existence of such
11 different or additional facts. In furtherance of this intention, Settlement Class
12 Members expressly waive any rights or protections under any statute, legal
13 doctrine, or other authority that restricts the release of unknown claims, including
14 but not limited to Section 1542 of the California Civil Code (and any other similar
15 state statute). Section 1542 states:

16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
17 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
18 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
19 EXECUTING THE RELEASE WHICH IF KNOWN BY HIM
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.

20 9.4 Notwithstanding any other provision of this Agreement,
21 Released Claims shall not include those claims against the Prudential Defendants
22 that were brought as part of this Litigation.

23 **10. Claims Administrator**

24 10.1 As provided in Section 3.2.3, the Claims Administrator shall
25 receive payment from the Gross Settlement Amount for those fees and expenses
26 reasonably incurred as a result of procedures and processes expressly required by
27 this Agreement. Based on current estimates, the Settling Parties anticipate that the
28 total sum paid to the Claims Administrator will not exceed \$300,000, but the

1 Settling Parties understand and agree that this figure represents just an estimate,
2 that the sum charged by the Claims Administrator may be different, and that the
3 entire amount charged will be offset against the Gross Settlement Amount.

4 10.2 The terms of this Agreement shall govern the actions of the
5 Claims Administrator. Class Counsel and the Wachovia Defendants may provide
6 relevant information needed by the Claims Administrator per this Agreement and
7 engage in related communications with the Claims Administrator with notice and
8 copies to one another, but without notice or copies to any Class Members or the
9 Court.

10 10.3 If either Party takes the position that the Claims Administrator
11 is not acting in accordance with the terms of this Agreement, the Parties shall meet
12 and confer with the other prior to raising any such issue with the Claims
13 Administrator or the Court.

14 11. **Termination Of Settlement**

15 11.1 The Wachovia Defendants shall have the right to withdraw
16 from and terminate the settlement and this Agreement if 10% or more of the Rule
17 23 Class Members file Qualifying Exclusion Forms.

18 11.2 The Wachovia Defendants shall have the right to withdraw
19 from and terminate the settlement and this Agreement if fewer than 10% of the
20 FLSA Collective Group Members file Qualifying Claim Forms.

21 11.3 In the event that the Court does not approve the settlement set
22 forth in this Agreement, one of the conditions upon which this Agreement is based
23 is not satisfied, or the Settlement Effective Date does not occur, the Wachovia
24 Defendants shall make no payments to anyone in accordance with the terms of this
25 Agreement, the Settling Parties will bear their own costs and fees with regard to
26 the efforts to obtain Court approval, and this Agreement shall be deemed null and
27 void with no effect on the Litigation whatsoever. Court changes to the dates of
28 hearings provided for in this Agreement and/or reductions in the amount of

1 attorneys' fees, litigation costs and/or Enhancement Payments pursuant to Sections
2 3.2.1 and 3.2.2 and/or the Court's refusal to enjoin Class Members from filing new
3 lawsuits based on Released Claims prior to the Settlement Effective Date shall not
4 by themselves permit termination of this Agreement.

5 11.4 The Wachovia Defendants' acceptance of the settlement is
6 conditioned upon the execution of this Agreement by all Named Plaintiffs who are
7 represented by Co-Lead Counsel and the Plaintiffs' Executive Committee
8 Members. If this condition is not met, then Section 11.3 will apply.

9 11.5 If this Agreement does not become final and effective, then
10 Plaintiffs and Wachovia Securities shall each pay one-half of the costs and fees of
11 the Claims Administrator incurred in connection with the Settlement through the
12 date the Claims Administrator is notified the Agreement will not become final.
13 Alternatively, if either timely exercises its right to withdraw, then the withdrawing
14 Party shall pay the entire costs and fees of the Claims Administrator through such
15 date.

16 12. Miscellaneous Provisions

17 12.1 The only Class Members entitled to any payment under this
18 Agreement and the associated Judgment are Participating Claimants. The
19 provisions of California Code of Civil Procedure section 384 and/or any similar
20 statute in any other state do not apply to this Litigation or this Agreement.

21 12.2 The Parties and their counsel shall cooperate to obtain a
22 preliminary approval order from the Court that includes a provision for the interim
23 stay of all proceedings as to the Wachovia Defendants with respect to the Released
24 Claims in each such action or proceeding pending the Judgment becoming Final.
25 Upon the entry of the preliminary approval order, all such proceedings against the
26 Wachovia Defendants, whether part of the Litigation or not, other than proceedings
27 as may be necessary to carry out the terms and conditions of this Agreement, shall
28 be stayed and suspended with respect to the Released Claims until further order of

1 the Court. The preliminary approval order shall also bar and enjoin all Class
2 Members and anyone acting on behalf of any Class Member from (a) filing, or
3 taking any action directly or indirectly, to commence, prosecute, pursue or
4 participate on a class or collective action basis any action, claim or proceeding
5 against the Wachovia Defendants in any forum in which any of the Released
6 Claims are asserted, or which in any way would prevent any such claims from
7 being extinguished or (b) seeking, whether on a conditional basis or not,
8 certification of a class or collective action that involves any such claims. In
9 addition, no later than ten (10) court days after the Settlement Effective Date, the
10 Settling Parties, through their respective counsel shall jointly apply for orders from
11 the Court dismissing the Litigation with prejudice as to the Wachovia Defendants.
12 If the Court gives preliminary approval to this Agreement but does not enter the
13 above-described injunction, such action by the Court shall not be deemed a
14 substantial change permitting termination of this Agreement.

15 12.3 No Person shall have any claim against Class Counsel, the
16 Claims Administrator, or counsel for Wachovia Securities based on the payments
17 made or other actions taken substantially in accordance with this Agreement or
18 further orders of the Court.

19 12.4 In the event that this Agreement is not substantially approved
20 by the Court or is terminated, cancelled, declared void or fails to become effective
21 in accordance with its terms, if there is no Judgment, or if the Judgment does not
22 become Final, the Settling Parties shall resume the Litigation at that time as if no
23 Agreement had been entered. In such event, the terms and provisions of this
24 Agreement shall have no further force and effect with respect to the Settling Parties
25 and shall not be used in this Litigation or in any other proceeding for any purpose,
26 and any judgment or order entered by the Court in accordance with the terms of
27 this Agreement shall be treated as vacated, *nunc pro tunc*. In such event, all
28 discussions and negotiations related to and/or culminating in this Agreement shall

1 remain confidential and subject to the Federal Rule of Evidence 408, any similar
2 state statute in any other jurisdiction, the mediation privilege and the Settling
3 Parties' confidentiality agreement signed at the mediation on October 28, 2008.

4 12.5 The Settling Parties (a) acknowledge that it is their intent to
5 consummate this Agreement; and (b) agree to cooperate to the extent reasonably
6 necessary to effect and implement all terms and conditions of this Agreement and
7 to exercise their best efforts to accomplish the foregoing terms and conditions of
8 this Agreement.

9 12.6 No later than thirty (30) days following the Settlement Effective
10 Date, Named Plaintiffs and Class Counsel shall destroy, at their own cost, all
11 original and duplicate copies of all documents and materials covered by the
12 Parties' Stipulated Protective Order. All original and duplicate copies of any such
13 materials given by Class Counsel or Named Plaintiffs to any party, expert,
14 consultant or other person shall be retrieved by Class Counsel or the Named
15 Plaintiffs and destroyed. No later than forty-five (45) days following the
16 Settlement Effective Date, Named Plaintiffs and Class Counsel shall certify the
17 collection and destruction of the above-described materials to Wachovia
18 Securities' counsel.

19 12.7 Named Plaintiffs and Class Counsel shall maintain in a secure
20 place and keep confidential all documents and materials produced by the Wachovia
21 Defendants solely for purposes of the settlement negotiations and mediation
22 sessions.

23 12.8 This Agreement compromises claims that are contested in good
24 faith, and it shall not be deemed an admission by any of the Settling Parties as to
25 the merits of any claim or defense. The Settling Parties agree that the amounts
26 paid in settlement and the other terms of this Agreement were negotiated in good
27 faith by the Settling Parties and reflect a settlement that was reached voluntarily
28 after consultation with competent legal counsel.

1 12.9 All of the exhibits to this Agreement are material and integral
2 parts hereof and are fully incorporated herein by this reference.

3 12.10 The Settling Parties may amend or modify this Agreement only
4 by a written instrument signed by or on behalf of all Settling Parties or their
5 respective successors-in-interest.

6 12.11 This Agreement constitutes the entire agreement among the
7 Settling Parties hereto, and no Settling Party has made any representations,
8 warranties, or inducements to any other Settling Party concerning this Agreement
9 or its exhibits other than the representations, warranties, and covenants contained
10 and memorialized in such documents. Except as otherwise provided herein, each
11 Settling Party shall bear its own costs and attorneys' fees.

12 12.12 Each counsel or other Person executing this Agreement or any
13 of its exhibits on behalf of any Settling Party hereby warrants that he or she has the
14 full authority to do so.

15 12.13 The Settling Parties may execute this Agreement in one or more
16 counterparts. All executed counterparts and each of them shall be deemed to be
17 one and the same instrument. A complete set of original executed counterparts
18 shall be filed with the Court.

19 12.14 This Agreement shall be binding upon, and inures to the benefit
20 of, the heirs, executors, successors and assigns of the Settling Parties, but this
21 Agreement is not designed to and does not create any third-party beneficiaries.

22 12.15 The Court shall retain jurisdiction with respect to
23 implementation and enforcement of the terms of this Agreement, and all Settling
24 Parties hereto submit to the jurisdiction of the Court for purposes of implementing
25 and enforcing the settlement embodied in this Agreement.

26 12.16 This Agreement and the exhibits hereto shall be considered to
27 have been negotiated, executed, and delivered, and to have been wholly performed,
28 in the State of California, and the rights and obligations of the Settling Parties to

1 this Agreement shall be construed and enforced in accordance with, and governed
2 by, the internal, substantive laws of the State of California without giving effect to
3 that State's choice of law principles.

4 12.17 The language of all parts of this Agreement shall in all cases be
5 construed as a whole, according to its fair meaning, and not strictly for or against
6 either Settling Party. No Settling Party shall be deemed the drafter of this
7 Agreement. The Settling Parties acknowledge that the terms of this Agreement are
8 contractual and are the product of negotiations between them and their counsel.
9 Each Settling Party and their counsel cooperated in drafting and preparing this
10 Agreement. In any construction to be made of this Agreement, this Agreement
11 shall not be construed against any Settling Party, and the canon of contract
12 interpretation to the contrary shall not be applied.

13 12.18 The Class Representatives and Class Counsel shall not cause
14 any aspect of the Litigation or the terms of this Agreement to be reported to the
15 media or news reporting services prior to the Judgment becoming Final.

16 *may*
17 DATED: *April 6*, 2009

WACHOVIA SECURITIES, LLC

18
19 By *Donald M. Connolly*

20
21 *may*
22 DATED: *April 6*, 2009

Its *Chairman*

WACHOVIA CORPORATION

23
24 By *Donald M. Connolly*

25 Its *SR. EXEC. V.P.*

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1 DATED: April __, 2009

FIRST UNION SECURITIES, INC.

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By David M. Cund

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Its SR. Exec. U.S.

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6 DATED: April __, 2009

CHARLES BADAIN

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BRUCE BARRON

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WAYNE RIBNICK

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ROBERT BURAKOFF

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JASON CLARK

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SHAWN DEWANE

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GILBERT GOOD

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FIRST UNION SECURITIES, INC.

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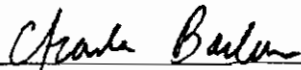
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CHARLES BADAIN

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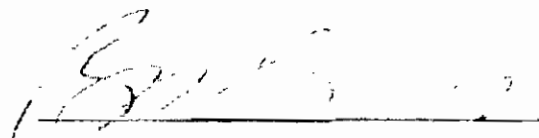
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By _____

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CHARLES BADAIN



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BRUCE BARRON

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WAYNE RIBNICK

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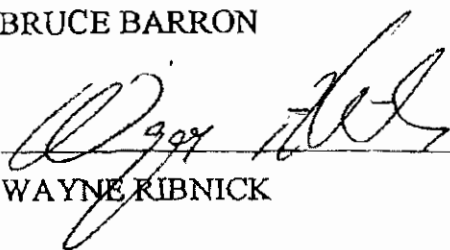
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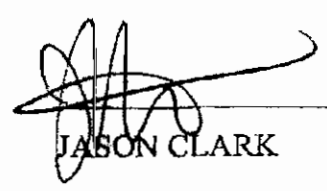
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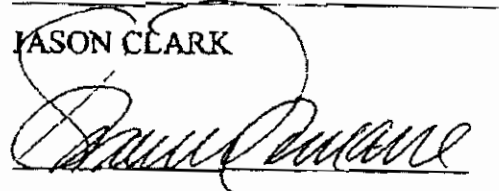
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FIRST UNION SECURITIES, INC.

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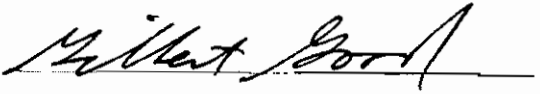
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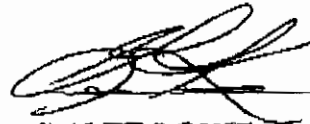
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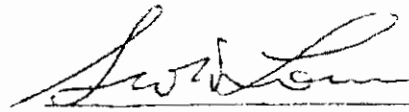
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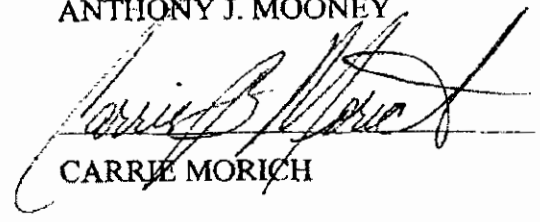
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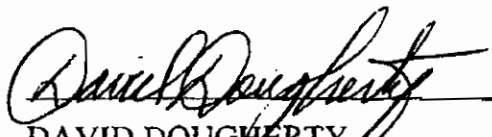
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22 **Approving As To Form:**

23 SEYFARTH SHAW LLP

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Attorneys for Defendants
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27 Wachovia Corporation,
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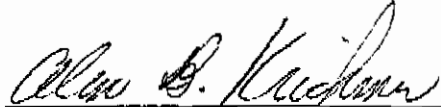
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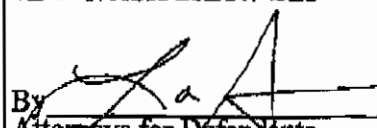
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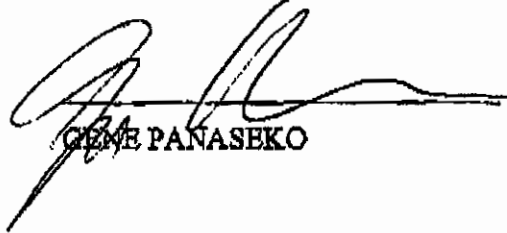
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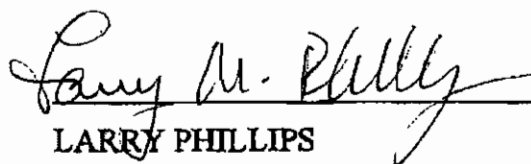
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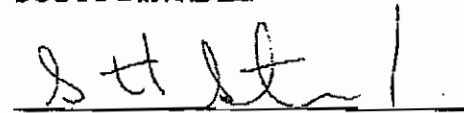
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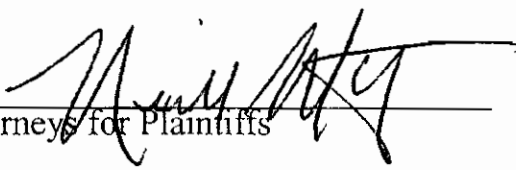
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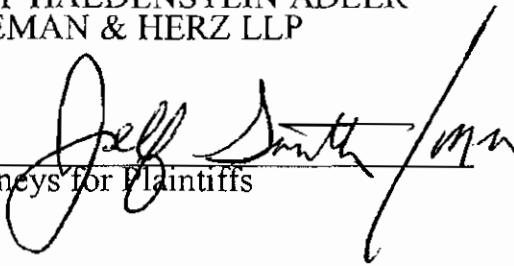
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EXHIBIT A

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
NOTICE OF PROPOSED COLLECTIVE ACTION SETTLEMENT**

In Re Wachovia Securities, LLC, Wage and Hour Litigation

Multi-District Litigation No. 1807

U.S. District Court Master File No. SACV 05-1031 DOC (RNBx)

ATTENTION: IF YOU HAVE BEEN EMPLOYED BY WACHOVIA SECURITIES, LLC AS A FINANCIAL ADVISOR OR FINANCIAL ADVISOR TRAINEE DURING THE TIME PERIODS LISTED BELOW YOU MAY BE ELIGIBLE TO RECOVER MONEY AS THE RESULT OF A PROPOSED \$39 MILLION CLASS AND COLLECTIVE ACTION SETTLEMENT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

IMPORTANT DATES:

The final hearing date for approval of this proposed class and collective action settlement has been set for _____, at ____ o'clock m., in Courtroom __ at the United States District Court for the Central District of California, 411 West Fourth Street, Courtroom 9D, Santa Ana, California, 92701, California.

Your claim form, if you worked in one of the seven states specified below and want to participate in the class and collective settlement, or your exclusion form if you worked in one of the seven states specified below and want to opt-out of the class for those seven states, must be returned by [INSERT DATE 60 DAYS FROM DATE OF MAILING OF CLASS NOTICE].

Similarly, if you worked in any of the 50 states, Washington, D.C., or a U.S. territory and want to participate in the collective settlement, your claim form must be returned by [INSERT DATE 60 DAYS FROM DATE OF MAILING OF CLASS NOTICE]. If you do not want to participate in the collective settlement, you should not file a claim form.

If you are a member of the class, having worked in one of the seven states specified below, and you do not exclude yourself from the class by filing the exclusion form, you may object to the terms of the class action settlement by filing an objection before [INSERT DATE 60 DAYS FROM DATE OF MAILING OF CLASS NOTICE], as more fully described below.

Each of these options, procedures, and dates is more fully described below. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

This settlement applies to all current and former Financial Advisors and Financial Advisor Trainees who are or were employed by Wachovia Corporation, Wachovia Securities, LLC, or First Union Securities, Inc., in the following states during the following time periods:

California:	September 18, 1998 to [date of preliminary approval]
Illinois:	August 30, 2003 to [date of preliminary approval]
Minnesota:	August 31, 2003 to [date of preliminary approval]
New Jersey:	September 21, 2000 to [date of preliminary approval]
New York:	August 30, 1999 to [date of preliminary approval]
Ohio:	June 1, 2005 to [date of preliminary approval]
Pennsylvania:	May 5, 2003 to [date of preliminary approval]
All other States and the District of Columbia:	[Three years prior to date of preliminary approval, to date of preliminary approval]; or, if you previously signed and submitted a "Consent to Become a Party Plaintiff," May 21, 2005 to [date of preliminary approval]

TO RECEIVE A SHARE OF THE SETTLEMENT, YOU MUST FILL OUT AND RETURN THE ENCLOSED GREEN CLAIM FORM SO THAT IT IS POSTMARKED BY [INSERT DATE 60 DAYS FROM DATE OF MAILING]. IF YOU DO NOT RETURN A CLAIM FORM BY THIS DEADLINE, YOU WILL NOT RECEIVE MONEY UNDER THE SETTLEMENT, BUT YOU MAY STILL BE BOUND BY THE TERMS OF THE SETTLEMENT, INCLUDING THE RELEASE OF CLAIMS DESCRIBED BELOW. THE NUMBER OF MONTHS FOR WHICH YOU MAY RECEIVE A SETTLEMENT PAYMENT IS LISTED ON THE CLAIM FORM THAT YOU RECEIVED WITH THIS NOTICE (THE GREEN FORM), AND YOUR ESTIMATED SHARE OF THE SETTLEMENT FOR EACH OF THOSE WORK MONTHS IS DISCUSSED IN SECTION 2.B OF THIS NOTICE.

1. WHAT THIS NOTICE IS ABOUT:

There are several pending class action lawsuits (the "Lawsuits") against Wachovia Corporation, Wachovia Securities, LLC, and First Union Securities, Inc. (collectively referred to in this Notice as "Wachovia"). The Lawsuits have been brought on behalf of individuals who were employed by Wachovia in the United States of America in one or more of the following positions: Financial Advisor and Financial Advisor Trainee ("Covered Positions"). The Lawsuits have been joined together for pre-trial purposes in the U.S. District Court for the Central District of California before the Hon. David O. Carter, U.S. District Court Judge, and are collectively designated as the In re Wachovia Securities, LLC Wage and Hour Litigation, U.S.D.C. Master File No. SACV 05-1031 DOC (RNBx), MDL No. 1807.

The Lawsuits allege that Wachovia should have paid its employees in the Covered Positions overtime pay under the federal Fair Labor Standards Act (the "FLSA") and under various state laws, because they do not qualify as "exempt" under the FLSA or applicable state law. The Lawsuits also allege that Wachovia took illegal deductions from the wages of employees in the Covered Positions in violation of state law in the seven states specified above.

Wachovia denies all of the claims and allegations in the Lawsuits, and maintains that it complied with all applicable federal and state laws regarding the payment of employees in Covered Positions, and that it properly compensated employees in the Covered Positions at all times. Specifically, Wachovia maintains that employees in Covered Positions were properly classified as exempt and were not entitled to overtime pay, and that the alleged “deductions” at issue in the Lawsuits were a permissible component of a commission calculation and otherwise permissible under applicable state law. Wachovia denies that any employees in Covered Positions are owed any compensation for overtime hours or any reimbursement of or payment for alleged deductions. Wachovia also contends that the Lawsuits cannot properly be maintained as class or collective actions, other than for purposes of this settlement.

The Lawsuits have been actively litigated since they were filed. The parties have conducted formal discovery and have exchanged detailed information about the claims, defenses, and alleged damages at issue. A Settlement has now been reached, after lengthy settlement negotiations and four all-day mediation sessions overseen by an independent and experienced mediator.

On **[insert date of Preliminary Approval Order]**, the Court granted preliminary approval to the Settlement.

According to Wachovia’s records, you are covered by this Settlement, and are entitled to receive a share of the Settlement proceeds. The purpose of this Notice is to explain your legal rights regarding the Settlement and the procedures for making a claim, objecting to the Settlement, or excluding yourself from the Settlement.

2. TERMS OF THE SETTLEMENT

Subject to the Court’s approval, the terms of the Settlement are as follows:

A. **Settlement Payment.** Wachovia is paying \$39 million (the “Settlement Payment”) into an interest bearing account (the “Settlement Account”) in full and final settlement of the Lawsuits. The funds in the Settlement Account, including a portion of the interest accruing thereon after the date of entry of Judgment (together, the “Settlement Consideration”) will be used to pay all timely and valid claims, as well as the attorneys’ fees and litigation expenses of the plaintiffs’ attorneys, the enhancement payments to the Class Representatives, the costs of claims administration, and the payment to the California Workforce Development Agency. The attorneys’ fees, litigation expenses, and enhancement payments to the Class Representatives are subject to approval by the Court. In addition to the Settlement Payment, Wachovia will pay the employer’s share of any payroll taxes on the wage portion of the settlement payments. The Settlement Consideration, after payment of attorneys’ fees and litigation expenses, enhancement payments, costs of claims administration, and payment to the California Workforce Development Agency, is referred to as the “Net Settlement Amount.”

B. Allocation of the Net Settlement Amount. Individuals who file timely and valid claims in accordance with the procedure described in Section 3 below (“Participating Claimants”) will receive a settlement payment based on: (1) the state or states where they were so employed; and, (2) the number of months they were so employed in such Covered Position(s) during the applicable Recovery Period, where a “month” refers to a calendar month in which the Class member was actively employed by Wachovia in a Covered Position for at least one (1) calendar day (“Qualifying Work Months”). Based on respective state laws, the states are divided into two tiers. The estimated settlement payments by state are summarized in the following table:

If you worked in the following states in a Covered Position:	Your Recovery Period is:	Your Estimated Payment for each month of employment in a Covered Position in this state during the Recovery Period is:
California	September 18, 1998 through [insert date of Preliminary Approval Order]	
TIER 2 STATES		
New Jersey	September 21, 2000 through [insert date of Preliminary Approval Order]	
New York	August 30, 1999 through [insert date of Preliminary Approval Order]	
Pennsylvania	May 5, 2003 through [insert date of Preliminary Approval Order]	
TIER 1 STATES		
Illinois	August 30, 2003 through [insert date of Preliminary Approval Order]	
Minnesota	August 31, 2003 through [insert date of Preliminary Approval Order]	
Ohio	June 1, 2005 through [insert date of Preliminary Approval Order]	
All other states and the District of Columbia	If you submitted a consent to join form before December 31, 2008, then May 21, 2005 through [insert date of Preliminary Approval Order]. If you did not submit a consent to join form before December 31, 2008, then [insert date three years prior to Preliminary Approval Order] through [insert date of Preliminary Approval Order].	

The basis for the differentiation in the Estimated Payment amounts listed above is that the state law claims asserted in these actions in California provide greater protections

for employees than the laws of the Tier 2 states, and the laws of the Tier 2 states provide greater protections for employees than the laws of the Tier 1 states.

The "Estimated Payment" amounts listed above are after deduction of the proposed attorneys' fees, litigation expenses, plaintiff enhancement payments, costs of claims administration, and payment to the California Labor Workforce Development Agency ("LWDA") discussed in Paragraph 2.D below. The Estimated Payment amounts are estimates. The actual amounts will depend upon the number of Class members who make claims under the Settlement, the actual amount of work months each of them presents, the costs of claims administration, as well as the amounts of attorneys' fees, litigation expenses, and Class Representative enhancement payments that are awarded by the Court. In addition, please be aware that half of your settlement payment is deemed wages and will be reduced by your share of taxes and withholdings.

Wachovia will pay to Participating Claimants a minimum of seventy percent (70%) of the Net Settlement Amount. Accordingly, if the Participating Claimants claim less than 70% of the Net Settlement Amount, then the amount due to each Participating Claimant under the Settlement Formula shall be increased, on a *pro rata* basis according to each Participating Claimant's number of Qualifying Work Months, so that the total amount paid collectively to the Participating Claimants is equal to seventy percent (70%) of the Net Settlement Amount. Any amounts unclaimed by Participating Claimants over seventy percent (70%) of the Net Settlement Amount shall revert to Wachovia.

C. Your Qualifying Work Months. Based on information provided by Wachovia, your Qualifying Work Months are listed on the Claim Form that is included with this Notice (the green document attached hereto).

If you disagree with the number of Qualifying Work Months listed on the Claim Form, you must write on the Claim Form your correct dates of employment in each Covered Position during the Recovery Period. You must also provide documents (e.g., check stubs, cancelled checks, payroll documents, or registration records) evidencing the correct number of Qualifying Work Months. The Qualifying Work Months listed above are presumed to be accurate unless you provide documentation proving otherwise. If you disagree with the number of Qualifying Work Months listed above and provide documentation to support your claim for correction of the number of Qualifying Work Months, Class Counsel will work with counsel for Wachovia Securities to attempt to resolve the issue. If the parties cannot agree on your claim for correction, the parties will submit the issue to the Court. You will have the burden of proving your claim for correction to the Court, and the Court shall have the final authority to determine the number of Qualifying Work Months to which you are entitled.

D. Attorneys' Fees, Litigation Expenses, Enhancement Payments, Costs of Claims Administration, and LWDA Payment. Class Counsel will ask that the Court award the plaintiffs' attorneys up to 25% of the Settlement Consideration as attorneys' fees for handling the Lawsuits on behalf of the Class, plus litigation expenses they

incurred on behalf of the Class. Class Counsel will also ask the Court to award the Class Representatives up to \$15,000 each for the time they spent, and the risk they undertook, in bringing and prosecuting the Lawsuits on behalf of the Class. In addition, pursuant to the terms of the Settlement, the parties have agreed to pay out of the Settlement Payment the reasonable fees and costs of the Claims Administrator in administering the Settlement estimated to be \$300,000, and payment to the LWDA in the amount of \$30,000.

3. YOUR RIGHTS AND OPTIONS

Your rights and options under this Settlement depend on what states you worked in during the applicable periods.

A. California, Illinois, Minnesota, New Jersey, New York, Ohio, and Pennsylvania:

If you worked as a Financial Advisor or Financial Advisor Trainee in any of the following states during the following periods, this section applies to you:

California:	September 18, 1998 to [date of preliminary approval]
Illinois:	August 30, 2003 to [date of preliminary approval]
Minnesota:	August 31, 2003 to [date of preliminary approval]
New Jersey:	September 21, 2000 to [date of preliminary approval]
New York:	August 30, 1999 to [date of preliminary approval]
Ohio:	June 1, 2005 to [date of preliminary approval]
Pennsylvania:	May 5, 2003 to [date of preliminary approval]

You have four options under the Settlement: (1) elaim money; (2) object; (3) do nothing; and (4) exclude yourself.

1. To Claim Money Under the Settlement: If you wish to receive money under the Settlement, you must complete the enclosed Claim Form (the green document), without redaction, deletion or revision of any of the release, waiver and covenant not to sue language on the form, and return it by mail to the Claims Administrator at the following address:

[INSERT ADDRESS AND TOLL FREE TELEPHONE NUMBER]

YOUR CLAIM FORM MUST BE POSTMARKED NO LATER THAN [INSERT DATE 60 DAYS FROM DATE OF MAILING OF CLASS NOTICE]. If your Claim Form is not postmarked by that date, or is incomplete, you will not receive any payment. If you lose, misplace, or require another Claim Form, you should immediately contact the Claims Administrator.

2. To Object to the Settlement: If you wish to object to the Settlement, then on or before [INSERT DATE 60 DAYS FROM DATE OF MAILING], you must file a written objection with the Court that clearly and concisely explains the legal and

factual basis for your objection and serve copies of your objection on the Claims Administrator and the following attorneys:

CLASS COUNSEL:

JEFFREY G. SMITH
**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**
270 Madison Avenue
New York, NY 10016
Telephone: (212) 545-4600
Facsimile: (212) 545-4653

JOSEPH W. COTCHETT
COTCHETT, PITRE & McCARTHY
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577

ATTORNEYS FOR WACHOVIA:

Lorie E. Almon
Brett C. Bartlett
SEYFARTH SHAW LLP
620 Eighth Avenue
New York, New York 10018
Telephone: (212) 218-5500
Facsimile: (310) 201-5129

Malcolm Heinicke
MUNGER, TOLLES & OLSON, LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105
Telephone: (415) 512-4000
Facsimile: (415) 512-4077

All objections must be signed and must set forth your name, address, telephone number, and the name of this lawsuit (In re Wachovia Securities, LLC Wage and Hour Litigation, U.S.D.C. Master File No. SACV 05-1031 DOC (RNBx), MDL No. 1807). If you file a written objection to the Settlement, you or your attorney may also appear in Court to argue your objection at the Final Approval Hearing. The address of the Court and the date, time, and place of the Final Approval Hearing are listed in Section 7 below.

If you do not object in the manner described above, you shall be deemed to have waived any objections, and shall forever be foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the payment of Class Counsel's attorneys' fees and litigation expenses, the enhancement payments to the named plaintiffs, and any other aspect of the Settlement.

If you intend to object to the Settlement but also wish to receive your share of the Settlement if it is approved by the Court, you must also submit a timely and valid Claim Form under Section 3.A.1 above.

3. If You Do Nothing: If you do nothing, you will not receive any money under the Settlement. However, you will still be bound by the terms of the Settlement, including the release of wage and hour claims under state law, as set forth in Section 4, below. You will not release any claims you might have against Wachovia under federal wage and hour law.

4. To Exclude Yourself from the Class and from the Settlement: If you wish to exclude yourself ("opt out") from the Settlement, you must complete the enclosed Request for Exclusion Form (the orange document) and return it by mail to the Claims

Administrator at the address listed above. To be valid, the Request for Exclusion Form must be postmarked no later than [INSERT DATE 60 DAYS FROM DATE OF MAILING OF CLASS NOTICE]. If you submit a Request for Exclusion Form after that date, your Request for Exclusion Form will be rejected and you will remain a member of the Class and be bound by the terms of the Settlement, including the release of wage and hour claims under state law, as set forth in Section 4.

If you submit a timely and valid Request for Exclusion Form, you will no longer be a member of the Class and will receive no money under the Settlement, but you will retain whatever claims you may have against Wachovia with regard to the Settled Claims.

DO NOT SUBMIT BOTH THE CLAIM FORM AND A REQUEST FOR EXCLUSION. IF YOU SUBMIT BOTH, THE REQUEST FOR EXCLUSION MAY BE INVALID, AND YOU MAY BE INCLUDED IN THE CLASS, AT WHICH POINT YOU WILL BE BOUND BY THE TERMS OF THE SETTLEMENT.

B. All Other States and the District of Columbia:

If you worked as a Financial Advisor or Financial Advisor Trainee in any of the other 43 states, the District of Columbia, or one of the U.S. territories during the following periods, this section applies to you.

i. Individuals Who Previously Submitted Consent to Join Forms: If you submitted a Consent to Become a Party Plaintiff before December 31, 2008, the applicable period is from May 21, 2005 through [insert date of Preliminary Approval Order];

ii. Individuals Who Have Not Previously Submitted Consent to Join Forms: If you did not submit a Consent to Become a Party Plaintiff before December 31, 2008, the applicable period is from [insert date three years prior to Preliminary Approval Order] through [insert date of Preliminary Approval Order].

You have three options under the Settlement: (1) claim money; (2) object; and (3) do nothing.

1. To Claim Money Under the Settlement: If you wish to claim money under the Settlement, you must complete the enclosed Claim Form (the green document), without redaction, deletion or revision of any of the release, waiver and covenant not to sue language on the form, and return it by mail to the Claims Administrator at the following address:

[INSERT ADDRESS AND TOLL FREE TELEPHONE NUMBER]

YOUR CLAIM FORM MUST BE POSTMARKED NO LATER THAN [INSERT DATE 60 DAYS FROM DATE OF MAILING OF CLASS NOTICE]. If your Claim

Form is not postmarked by that date, or is incomplete, you will not receive any payment. If you lose, misplace, or require another Claim Form, you should immediately contact the Claims Administrator.

2. To Object to the Settlement: If you wish to object to the Settlement, then on or before [INSERT DATE 60 DAYS FROM DATE OF MAILING], you must file a written objection with the Court that clearly and concisely explains the legal and factual basis for your objection and serve copies of your objection on the Claims Administrator and the following attorneys:

CLASS COUNSEL:

**JEFFREY G. SMITH
WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**
270 Madison Avenue
New York, NY 10016
Telephone: (212) 545-4600
Facsimile: (212) 545-4653

**JOSEPH W. COTCHETT
COTCHETT, PITRE & McCARTHY**
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577

ATTORNEYS FOR WACHOVIA:

Lorie E. Almon
Brett C. Bartlett
SEYFARTH SHAW LLP
620 Eighth Avenue
New York, NY 10018
Telephone: (212) 218-5500
Facsimile: (212) 218-5526

Malcolm Heinicke
MUNGER, TOLLES & OLSON, LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105
Telephone: (415) 512-4000
Facsimile: (415) 512-4077

All objections must be signed and must set forth your name, address, telephone number, and the name of this lawsuit (In re Wachovia Securities, LLC Wage and Hour Litigation, U.S.D.C. Master File No. SACV 05-1031 DOC (RNBx), MDL No. 1807). If you file a written objection to the Settlement, you or your attorney may also appear in Court to argue your objection at the Final Approval Hearing. The address of the Court and the date, time, and place of the Final Approval Hearing are listed in Section 7 below.

If you do not object in the manner described above, you shall be deemed to have waived any objections, and shall forever be foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the payment of Class Counsel's attorneys' fees and litigation expenses, and any other aspect of the Settlement.

If you intend to object to the Settlement but also wish to receive your share of the Settlement if it is approved by the Court, you must also submit a timely and valid Claim Form under Section 3.B.1 above.

3. If You Do Nothing: If you do nothing, you will not receive any share of the settlement proceeds. However, you will not release any of your claims against Wachovia, and may bring them in a separate lawsuit.

4. RELEASE OF CLAIMS

If you complete and submit a Claim Form, in exchange for the Settlement payment, you will, on behalf of yourself, and each of your heirs, representatives, successors, assigns, trustees, beneficiaries, and attorneys, be deemed to have, and by operation of the Judgment to be entered by the Court following its entry of an order granting final approval of the Settlement, will have, fully, finally, and forever (1) released and discharged Wachovia Securities, LLC, each of its affiliates (including without limitation parents and subsidiaries including, but not limited to, Wachovia Corporation and Wells Fargo), and all of their predecessors, successors, divisions, joint ventures and assigns, and each of these entities' past or present directors, officers, employees, partners, members, principals, agents, ERISA plans, ERISA plan administrators, insurers, co-insurers, re-insurers, shareholders, attorneys, personal or legal representatives ("Wachovia Releasees"), from each of the Released Claims, and (2) covenanted and agreed not to file or prosecute any suit, action or proceeding in any forum against Wachovia Releasees on the basis of any of the Released Claims.

"Released Claims" means any and all claims, rights, demands, liabilities, and causes of action arising during the Class Periods under federal and state laws regarding any and all claims for the failure to pay any type of wages and associated penalties and/or damages for purported misclassification as exempt from the overtime and minimum wage requirements under federal and state laws; any and all claims for the failure to provide meal and/or rest periods; any and all claims for violation of payroll or wage record-keeping or itemization requirements, including without limitation any claims concerning time records, the timing of wage payments, or the manner of wage payments; any and all claims alleging the improper assessment of costs, fines, chargebacks, deductions, business expenses, or settlements on employees, including, without limitation, deductions or chargebacks for trade errors or support staff; any and all claims for failure to reimburse, indemnify, cover, or pay for business costs, including without limitation claims for reimbursement of costs spent on or imposed for any type of business expenses, trade errors, or support staff; any and all claims for penalties, including without limitation liquidated and/or punitive damages relating to all claims released as specified above in this paragraph; any and all claims for interest, costs, attorneys' fees, equitable relief, or other types of available recovery relating to all claims released as specified above in this paragraph; and to the extent not covered above, any and all claims that were pled or could have been pled against the Wachovia Releasees in the Litigation.

The Released Claims include, but are not limited to: (a) any and all federal wage-and-hour claims, rights, demands, liabilities and causes of action of every nature and description, whether known or unknown (including those within the scope of pending litigation and arbitration), pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.*, and, the Portal to Portal Act, 29 U.S.C. § 251 *et seq.*, arising during the Class Periods; and (b) any and all state law claims, rights, demands, liabilities and causes of action of every nature and description, of the type described in the previous paragraph, whether known or unknown (including those within the scope of pending litigation or arbitration), arising during the Class Periods, including without limitation

statutory, constitutional, contractual or common law claims for wages, damages, attorneys' fees, unpaid costs, restitution, penalties, interest, or equitable relief.

The release of claims is intended as a complete release of the Released Claims, whether known or unknown, liquidated or unliquidated (including those within the scope of pending litigation or arbitration). As a consequence, you may later discover facts in addition to or different from those which you now know or believe to be true with respect to the subject matter of the Released Claims, but, upon the Settlement Effective Date, you shall be deemed to have, and by operation of the Judgment becoming Final, shall have, fully, finally and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden (including those within the scope of pending litigation or arbitration) which then exist, or previously have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. In furtherance of this intention, you expressly waive any rights or protections under any statute, legal doctrine, or other authority that restricts the release of unknown claims, including but not limited to Section 1542 of the California Civil Code (and any other similar state statute). Section 1542 states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

If you worked in California, Illinois, Minnesota, New Jersey, New York, Ohio, or Pennsylvania during the relevant time periods, and return neither a Claim Form nor a Request for Exclusion Form (i.e., you do nothing, as described in Section 3.A.3 above), the Released Claims will not include any claims under the FLSA arising from your employment in a Covered Position; provided, however, that Wachovia Securities has the right to request from the Court that you will forfeit, release, and waive all rights to bring or participate in a collective action under the FLSA against Wachovia Securities for the applicable Class Period covered by the Litigation, though you will have the right to pursue an individual action under the FLSA.

Notwithstanding any other provision of the Settlement, Released Claims shall not include claims against Prudential Financial, Inc., Prudential Equity Group, LLC, or Prudential Securities, Inc.

5. **PLAINTIFFS' COUNSEL RECOMMEND THE SETTLEMENT**

The law firms that represent the Plaintiffs strongly recommend that you accept the Settlement. The claims alleged in the Lawsuits are novel and highly technical. For instance, there is no reported court decision that holds that financial advisors are entitled to overtime pay. In light of the substantial risk that you might not receive anything at all if the Lawsuits proceed to trial, Plaintiffs' Counsel believe that the Settlement is in your best interests.

6. **THERE WILL BE NO ADVERSE CONSEQUENCES IF YOU MAKE A CLAIM**

Under federal law, it is illegal for Wachovia to retaliate or take any adverse action against any individual solely for making a claim under the Settlement. In addition, Wachovia has a longstanding policy against such retaliation, and has specifically agreed as a term of the Settlement that it will not retaliate or take any adverse action against any individual solely for making a claim under the Settlement.

7. **FINAL APPROVAL HEARING**

The Court will hold a hearing on _____ at _____ (Pacific Standard Time) to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. At that hearing, the Court will also rule on Class Counsel's motion for attorney's fees, litigation expenses, and Class Representative enhancements. The Court is located at 411 West Fourth Street, Courtroom 9D, Santa Ana, California, 92701. The hearing may be continued without further notice to the class. **YOU MAY, BUT ARE NOT REQUIRED TO, APPEAR AT THE HEARING.**

8. **ADDITIONAL INFORMATION**

This is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the "Joint Stipulation of Class Action Settlement And Release," which is on file with the Clerk of the Court. If you have any questions about the Settlement, you may contact either Class Counsel or the Claims Administrator at the addresses and telephone numbers listed below. **PLEASE DO NOT TELEPHONE THE COURT, WACHOVIA, OR WACHOVIA'S COUNSEL ABOUT THIS NOTICE.**

CLASS COUNSEL:

JEFFREY G. SMITH
WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
270 Madison Avenue
New York, NY 10016
Telephone: (212) 545-4600
Facsimile: (212) 545-4653
E-Mail: smith@whafh.com

CLAIMS ADMINISTRATOR:

JOSEPH W. COTCHETT (#36324)
COTCHETT, PITRE & McCARTHY
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
E-Mail: nfineman@cpmlegal.com

No payment made pursuant to the Settlement will (1) create any credit or otherwise affect the calculation of any compensation, deferred compensation or benefit under any compensation, deferred compensation, pension or other benefit plan, (2) be considered as "compensation" under any pension, retirement, profit sharing, incentive or deferred compensation plan or (3) require any contribution or award under any such plan, or (4) otherwise modify any benefits, contributions or coverage under any other employment benefit plan or program.

For income and payroll tax purposes, approximately 50% of each Settlement payment constitutes wages (which shall be subject to required withholdings and deductions and reported as wage income as required by law), and the remaining 50% of each Settlement payment plus any interest and any possible pro rata share of the remaining 70% of the Net Settlement Amount, if that occurs, constitutes penalties, punitive damages, liquidated damages, business costs, interest, reimbursements for items such as staffing, expenses, and errors, and all other non-wage recovery (which shall not be subject to required withholdings and deductions and shall be reported as non-wage income as required by law). For non-wage income, you shall be solely responsible for the reporting and payment of any federal, state, and/or local income or other tax or any other withholdings, if any, on any of the payments made to you. No representations have been made as to the taxability of any portions of these amounts, or the payment of any costs or an award of attorneys' fees. If you have any questions about the tax treatment of your Settlement payment, please consult your accountant or tax preparer. Neither the plaintiffs, nor Class Counsel, nor Wachovia makes any representations concerning the tax consequences of this Settlement or your participation in it.

BY ORDER OF THE U.S. DISTRICT COURT

Exhibit A, Attachment 1

CLAIM FORM

In Re Wachovia Securities, LLC, Wage and Hour Litigation
Multi-District Litigation No. 1807; U.S. District Court Master File No. SACV 05-1031 DOC (RNBx)

**You must complete and return this Claim Form
to receive a settlement payment**

THE POSTMARK DEADLINE FOR THIS FORM IS _____, 2009.

RETURN THIS FORM BY MAIL TO:
Claims Administration Center (*In re Wachovia Securities*)
c/o Garden City Group
[address]
[telephone]

[Claim Number]
[Name]
[Address]
[City, State, Zip]

Name/Address Changes, if any:

If you move after submitting this form and prior to receiving payment, please send the Claims Administrator your new address.

According to Wachovia Securities' records, you worked a total of _____ work months in a Covered Position during the Class Period(s) applicable to the state(s) in which you worked.

I have read and understood the accompanying Notice of Class Action Settlement ("Notice") and am choosing to participate in this action and make a claim under the terms of the Settlement Agreement. I agree to release the Released Claims described in the Notice to the fullest extent of the law, including all claims arising under the federal Fair Labor Standards Act relating to the claims made in the Complaint.

Dated: _____

Signature

Print Name

Telephone # (so the Claims Administrator can contact you if necessary): (____) _____

OPTIONAL CHALLENGE TO WORK MONTHS:

1. If you believe that the number of work months listed above is incorrect, please explain why, and what you believe the correct facts are:

2. Attach to this Claim Form any information or documents that support your position.

Any challenge will be thoroughly investigated by the parties and may be submitted to the Court that is overseeing this settlement. Should the parties' investigation result in a determination that you worked fewer months than those listed above, then any amount that you will be paid pursuant to this settlement will be based on the lesser number.

If you wish to challenge the number of work months listed above, please sign the verification provided below:

I hereby declare under penalty of perjury that my challenge is based on facts that I believe to be true and accurate.

Name

EXCLUSION FORM

In Re Wachovia Securities, LLC, Wage and Hour Litigation
Multi-District Litigation No. 1807; U.S. District Court Master File No. SACV 05-1031 DOC (RNBx)

DO NOT COMPLETE THIS FORM
IF YOU WISH TO RECEIVE A SETTLEMENT PAYMENT
AND WISH TO PARTICIPATE IN THE SETTLEMENT

This form applies only to individuals who worked in California, Illinois, Minnesota, New Jersey, New York, Ohio, or Pennsylvania during the applicable periods, as described in the accompanying Notice of Class Action Settlement.

THE POSTMARK DEADLINE FOR THIS FORM IS _____, 2009.

RETURN THIS FORM BY MAIL TO:

Claims Administration Center (*In re Wachovia Securities*)
c/o Garden City Group
[address]
[telephone]

[Claim Number]
[Name]
[Address]
[City, State, Zip]

Name/Address Changes, if any:

REQUEST FOR EXCLUSION:

By signing and returning this Exclusion Form, you certify that you wish to be excluded from the Settlement described in the accompanying "Notice of Class Action Settlement." If you exclude yourself from this Settlement, (1) you will have no right to receive any money under the terms of the Settlement; (2) you will not be bound by the terms of the Settlement; (3) you will have no right to object to the Settlement and be heard at the Final Approval Hearing; and (4) if you so choose, you may file your own lawsuit on this subject to the extent permitted by law without the Settlement barring any of your claims.

If you do not want to participate in the Settlement, but you do not file an Exclusion Form by the above deadline, the Settlement may bar any action you bring against Wachovia Corporation, Wachovia Securities, LLC, or First Union Securities, Inc., for claims released through the Settlement.

If you have any questions about this Exclusion Form or your rights under the Settlement, you may contact any member of Co-Lead Class Counsel at the address and telephone number listed below:

JEFFREY G. SMITH
WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
270 Madison Avenue
New York, NY 10016
Telephone: (212) 545-4600
Facsimile: (212) 545-4653
E-Mail: smith@whafh.com

JOSEPH W. COTCHETT
COTCHETT, PITRE & McCARTHY
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
E-Mail: nfineman@cpmlegal.com

You cannot return both a Claim Form and this Exclusion Form. If you send in this Exclusion Form AND a Claim Form, the Settlement Administrator will contact you to determine whether you intended to return the Claim Form or this Exclusion Form. You will be offered an opportunity to withdraw either form. However, if you do not withdraw either form, this Exclusion Form will be invalid, you will be included in the Settlement Class and receive your calculated share of the settlement payment, and you will be bound by the terms of the Settlement.

By signing this Exclusion Form, I hereby opt out of the Settlement. Furthermore, by signing this Exclusion Form, I understand that I will forego my right to receive any settlement benefits under the Settlement, I will not be bound by the terms of the Settlement, and I will have no right to object to the Settlement and be heard at the Final Approval Hearing.

Dated: _____

Signature

Print Name

Telephone # (so the Claims Administrator can contact you if necessary): () _____

EXHIBIT B

1 JEFFREY G. SMITH (#133113) smith@whafh.com
2 **WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP**
3 270 Madison Avenue
4 New York, NY 10016
5 Telephone: (212) 545-4600
6 Facsimile: (212) 545-4653

7 JOSEPH W. COTCHETT (#36324) jcotchett@cpmlegal.com
8 **COTCHETT, PITRE & McCARTHY**
9 San Francisco Airport Office Center
10 840 Malcolm Road, Suite 200
11 Burlingame, CA 94010
12 Telephone: (650) 697-6000
13 Facsimile: (650) 697-0577

14 *Co-Lead Counsel for Plaintiffs*

15 Lorie E. Almon (*pro hac vice*) lalmon@seyfarth.com
16 Brett C. Bartlett (*pro hac vice*) bbartlett@seyfarth.com
17 **SEYFARTH SHAW LLP**
18 620 Eighth Avenue
19 New York, New York 10018
20 Telephone: (212) 218-5500
21 Facsimile: (310) 201-5129

22 Malcolm Heinicke (#194174) heinickema@mto.com
23 **MUNGER, TOLLES & OLSON, LLP**
24 560 Mission Street, 27th Floor
25 San Francisco, CA 94105
26 Telephone: (415) 512-4000
27 Facsimile: (415) 512-4077

28 *Attorneys for Defendants Wachovia Corporation,
Wachovia Securities, LLC, and First Union Securities, Inc.*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

29 IN RE WACHOVIA SECURITIES, LLC)
30 WAGE AND HOUR LITIGATION } MDL No. 07-1807 DOC
31 This Document Relates To: } **[PROPOSED] JUDGMENT**
32 ALL ACTIONS } Court: 9D
33 } Hon. David O. Carter

1
2 This matter came on for hearing upon the joint application of the Settling
3 Parties for approval of the settlement set forth in the Joint Stipulation of Class
4 Action Settlement and Release (the “Stipulation”). Due and adequate notice
5 having been given to the Rule 23 Class and the FLSA Collective Group, and the
6 Court having considered the Stipulation, all papers filed and proceedings had
7 herein and all oral and written comments received regarding the proposed
8 settlement, and having reviewed the record in this Litigation, and good cause
9 appearing,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
11 FOLLOWS:

12 1. The Court, for purposes of this Judgment and Order of Dismissal
13 (“Judgment”), adopts all defined terms as set forth in the Stipulation filed in this
14 case.

15 2. The Court has jurisdiction over the subject matter of the Litigation,
16 the Class Representatives, the Rule 23 Class Members, the FLSA Collective
17 Group, and Defendants Wachovia Corporation, Wachovia Securities, LLC, and
18 First Union Securities, Inc. (the “Wachovia Defendants”).

19 3. The Court finds that the distribution of the Class Notice as provided
20 for in the Preliminary Approval Order, constituted the best notice practicable under
21 the circumstances to all Persons within the definition of the Rule 23 Class and
22 FLSA Collective Group, and fully met the requirements of due process under the
23 United States Constitution. Based on evidence and other material submitted in
24 conjunction with the settlement hearing, the Class Notice was adequate. The Court
25 further finds that the Wachovia Defendants have satisfied the requirements of
26 notice to pertinent government agencies set forth in the federal Class Action
27 Fairness Act, 28 U.S.C. § 1715.
28

1 4. The Court finds that the instant Litigation, in part, presented a good
2 faith dispute over the payment of wages, and the Court finds in favor of settlement
3 approval.

4 5. The Court approves the settlement of the above-captioned action, as
5 set forth in the Stipulation, and each of the releases and other terms, as fair, just,
6 reasonable and adequate as to the Settling Parties. The Settling Parties are directed
7 to perform in accordance with the terms set forth in the Stipulation.

8 6. For the Class Representatives as well as for those Members of the
9 Rule 23 Class and FLSA Collective Group who filed valid and timely Claim
10 Forms, all of the claims covered by the Federal Claims Release and State Claims
11 Release are dismissed with prejudice.

12 7. For those Rule 23 Class Members who failed to file valid and timely
13 Exclusion Forms, all of the claims covered by the State Claims Release are
14 dismissed with prejudice.

15 8. Solely for purposes of effectuating this settlement, this Court has
16 certified a class of all Members of the Rule 23 Class, as that term is defined in and
17 by the terms of the Stipulation, and the Court deems this definition sufficient for
18 purposes of due process and Rule 23.

19 9. With respect to the Rule 23 Class and for purposes of approving this
20 settlement only, this Court finds and concludes that: (a) the Members of the Rule
21 23 Class are ascertainable and so numerous that joinder of all members is
22 impracticable; (b) there are questions of law or fact common to the Rule 23 Class,
23 and there is a well-defined community of interest among Members of the Rule 23
24 Class with respect to the subject matter of the Litigation; (c) the claims of some or
25 all of the Class Representatives are typical of the claims of the Members of the
26 Rule 23 Class; (d) The Class Representatives have fairly and adequately protected
27 the interests of the Rule 23 Members of the Settlement Class; (e) a class action is
28 superior to other available methods for an efficient adjudication of this

1 controversy; and (f) the counsel of record for the Class Representatives, *i.e.*, Class
2 Counsel, are qualified to serve as counsel for the Named Plaintiffs in their
3 individual and representative capacities and for the Rule 23 Class.

4 10. Solely for purposes of effectuating this settlement, this Court has
5 certified a collective action class of all Members of the Federal Collective Group,
6 as that term is defined in and by the terms of the Stipulation, and the Court deems
7 this definition sufficient for purposes of due process and 29 U.S.C. § 216(b).

8 11. With respect to the Federal Collective Group and for purposes of
9 approving this settlement only, this Court finds and concludes that the Federal
10 Collective Group meets the requirements for certification as a collective action
11 class under 29 U.S.C. § 216(b) because the Federal Collective Group Members are
12 similarly situated.

13 12. By this Judgment, the Class Representatives shall release, relinquish
14 and discharge, and each of the Participating Claimants shall be deemed to have,
15 and by operation of the Judgment shall have, fully, finally, and forever released,
16 relinquished and discharged all claims covered by the Federal Claims Release and
17 the State Claims Release (including Unknown Claims).

18 13. By this Judgment, the Rule 23 Class Members who failed to file valid
19 and timely Exclusion Forms shall be deemed to have, and by operation of the
20 Judgment shall have, fully, finally, and forever released, relinquished and
21 discharged all claims covered by the State Claims Release (including Unknown
22 Claims).

23 14. This Litigation and the underlying cases that were consolidated before
24 this Court through the Multi-District Litigation process are hereby dismissed with
25 prejudice.

26 15. Neither the Stipulation nor the settlement contained therein, nor any
27 act performed or document executed pursuant to or in furtherance of the
28 Stipulation or the settlement: (a) is or may be deemed to be or may be used as an

Exhibit B, Page 4

1 admission of, or evidence of, the validity of any Released Claims, or of any
2 wrongdoing or liability of any of the Wachovia Securities Releasees; or (b) is or
3 may be deemed to be or may be used as an admission of, or evidence of, any fault
4 or omission of any of the Wachovia Securities Releasees in any civil, criminal or
5 administrative proceeding in any court, administrative agency or other tribunal. In
6 the event that the Settlement Effective Date does not occur, the Wachovia
7 Defendants shall not be estopped or otherwise precluded from contesting class or
8 collective action certification in the Litigation on any grounds. Any of the
9 Wachovia Securities Releasees may file the Stipulation and/or the Judgment from
10 this Litigation in any other action that may be brought against them in order to
11 support a defense or counterclaim based on principles of *res judicata*, collateral
12 estoppel, release, good faith settlement, judgment bar or reduction or any theory of
13 claim preclusion or issue preclusion or similar defense or counterclaim.

14 16. The only Rule 23 Class Members and FLSA Collective Group
15 Members entitled to payment pursuant to this Judgment are Participating
16 Claimants. Neither the Stipulation nor this Judgment will result in the creation of
17 any unpaid residue or residual, and any funds that are not claimed by Participating
18 Claimants shall remain the property of the Wachovia Defendants.

19 17. The Wachovia Defendants have agreed to pay Class Counsel their
20 reasonable attorney fees in this matter in the total combined, gross amount of
21 \$_____ as well as certain allowable costs in this matter up to the gross amount
22 of \$_____, and the Wachovia Defendants have agreed to pay enhancements in the
23 total gross amount of \$_____ to the Class Representatives to reimburse them for
24 their unique services. The Court finds that these agreements are fair and
25 reasonable. The Wachovia Defendants are directed to make these payments in
26 accordance with the terms of the Stipulation.

27 18. The Court reserves exclusive and continuing jurisdiction over the
28 Litigation, the Class Representatives, the Rule 23 Class, the FLSA Collective

1 Group, and the Wachovia Defendants for the purposes of supervising the
2 implementation, enforcement, construction, administration, and interpretation of
3 the Stipulation and this Judgment.

4 19. This document shall constitute a judgment (and separate document
5 constituting said judgment) for purposes of Federal Rule of Civil Procedure, Rule
6 58.

7 IT IS SO ORDERED.

8 DATED: _____

9 The Honorable David Carter
United States District Court Judge

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