

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GARY BUUS, et al., individually and on behalf)
of all others similarly situated,)

Plaintiffs,)

v.)

WAMU PENSION PLAN, et al.,)

Defendants.)

No. 07-CV-00903 MJP

**PLAINTIFFS' AMENDED MOTION
AND MEMORANDUM FOR AWARD
OF ATTORNEYS' FEES, EXPENSES,
AND CASE CONTRIBUTION
AWARDS**

**Filed by October 8, 2010, per Court
Order**

PLAINTIFFS' MOTION AND MEMORANDUM FOR
AWARD OF ATTORNEYS' FEES, EXPENSES, AND
CASE CONTRIBUTION AWARDS
(07-CV-00903 MJP)

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20 Bus. Law. 1009, 1029 & n.131 (1996) 5

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1 Named Plaintiffs Gary Buus, Bryan Buck, Sidney John Flor, Margaret Weber, Kellie
2 Plumb, Thomas Schoenleber and Audrey Schulman (hereinafter "Plaintiffs" or "Named
3 Plaintiffs") respectfully move the Court for an Order awarding Lead Counsel attorneys' fees and
4 reimbursement of expenses, as well as granting the Named Plaintiffs case service awards in
5 recognition of their valuable service to the class.

6 I. INTRODUCTION

7 Following the hotly contested litigation of this ERISA cash balance pension plan case, in
8 which discovery was completed, the class certified, and cross motions for summary judgment
9 filed, the parties have now settled this action. The Settlement provides for an increase of \$20
10 million in the liabilities of the WaMu Pension Plan, less fees and expenses, to be allocated
11 among the Settlement Class¹ members' Plan accounts. This Settlement was the result of hard-
12 fought litigation over three years, and arm's-length negotiation by the parties. It is an
13 exceptional recovery for the Class particularly in light of the type of claim asserted, and the
14 bankruptcy proceedings that stayed the litigation and put in question Plaintiffs' ability to obtain a
15 judgment even if successful on the merits.

16 The Final Approval Memorandum, to be filed by October 22, 2010, will discuss why the
17 Settlement is an excellent result for the Class and should be approved. This memorandum solely
18 addresses Lead Counsel's request for an award of attorneys' fees in the amount of \$4.2 million,
19 which represents 21% of the Settlement Amount, and for reimbursement of out-of-pocket
20 litigation expenses of \$390,124.89. In addition, Lead Counsel seeks approval in an aggregate
21 amount of \$65,000 in case contribution awards to the seven Named Plaintiffs in recognition of
22 their valuable service to the Class, payable from the Settlement Amount.

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26 ¹ Capitalized terms used herein shall have the meanings ascribed to them in the Buus Class Action Settlement Agreement entered in this action, a true and correct copy of which is Ex. A to the accompanying Sarko Declaration.

1 (9th Cir. 1993), and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002), the Ninth
2 Circuit expressly approved the use of the percentage method in common fund cases.

3 **B. A Fee Award Based on 21% of the Common Fund Is Fair and Reasonable**

4 The Ninth Circuit has adopted a 25% “benchmark” for attorneys’ fee awards in cases
5 with a common fund recovery. *See e.g., Grauly*, 886 F.2d 268, 272 (citing with approval the
6 adoption of a 25% benchmark); *see also Fischel*, 307 F.3d at 1006; *Vizcaino*, 290 F.3d at 1047.
7 This benchmark “can be adjusted upward or downward to account for any unusual circumstances
8 [S]uch an adjustment, however, must be accompanied by a reasonable explanation of why
9 the benchmark is unreasonable under the circumstances.” *Grauly*, 886 F.2d at 272-73.

10 In *Vizcaino*, the Ninth Circuit found that a fee award of 28% of the common fund was
11 reasonable because of: (1) the exceptional results achieved for the class; (2) the riskiness of the
12 litigation; (3) the benefits generated beyond the cash settlement fund; and (4) the financial
13 burdens of representing the class on a contingency basis. 290 F.3d at 1048-50. The Manual for
14 Complex Litigation add three more factors: (1) any objections by class members, (2) the skill and
15 efficiency of the attorneys involved, and (3) attorneys’ fee awards in other cases. Manual for
16 Complex Litigation (Fourth) § 14.121 at 257-58 (2010). Application of these factors strongly
17 supports the requested fee of 21% of the common fund in this case.

18 **1. Lead Counsel Obtained Exceptional Results**

19 Lead Counsel achieved exceptional results for the class. Lead Counsel pursued this case
20 despite the novelty of the claims, the lack of controlling authority, and disagreement among the
21 courts that had considered similar causes of action. *See Vizcaino*, 290 F.3d at 1048 (settlement
22 in absence of supporting precedent an “exceptional result”). Moreover, while this litigation has
23 been pending, similar ERISA § 204(h) cases were dismissed, or resulted in a no- or low-cash
24 settlement awards. *Hirt v. Equitable Ret. Plan for Emp., Managers & Agents*, No. 01-7290
25 (S.D.N.Y. filed Aug. 23, 2001) (dismissed); *Lonecke v. Citigroup*, No. 05-5296 (S.D.N.Y. filed
26 June 3, 2005) (dismissed); *Wilson v. J.P. Morgan Chase Ret. Plan*, No. 06-732 (S.D.N.Y. filed

1 Jan. 31, 2006) (settled, injunctive relief only); *Hurlic v. S. Cal. Gas Co.*, No. 05-05027 (C.D. Ca.
2 filed July 8, 2005) (settled). Lead Counsel is aware of only a single court that has entered
3 judgment for plaintiffs on an ERISA § 204(h) claim, and that judgment is on appeal to the
4 Supreme Court. *Amara v. CIGNA Corp.*, 559 F. Supp. 2d 192 (D. Conn. June 13, 2008), *cert.*
5 *granted*, 78 U.S.L.W. 3753 (U.S. June 28, 2010) (No. 09-804). When viewing the track record
6 of similar ERISA § 204(h) cash balance-related cases, there is no question that the Plaintiffs
7 obtained an exceptional result in this case.

8 In addition, the \$20 million Settlement represents a substantial recovery of the Plan's
9 total recoverable losses. The proper damages methodology is far from clear. Plaintiffs have
10 advocated that the measure of damages in this case is the benefit that the participants would have
11 received under the benefit formula in place prior to the challenged amendment. However,
12 Plaintiffs are not aware of any court that has applied this methodology. In fact, in *Amara* – the
13 one published decision entering judgment for plaintiffs on a similar 204(h) claim, the court
14 explicitly rejected the damages theory advocated here, and instead ordered a remedy based on
15 losses due to wearaway, which is a significantly lesser damages calculation. *Amara v. CIGNA*
16 *Corp.*, 559 F.Supp.2d at 209. Even that judgment is stayed pending appeal. *Id.* at 223. Hence,
17 there is significant risk that Plaintiffs' damages methodology would not be accepted in this case.

18 Nonetheless, based on available data and Plaintiffs' proposed methodology, Plaintiffs
19 estimate that the upper limit of potential losses is in the range of approximately \$142 to \$208
20 million. Calculated in this manner, the Settlement represents 9.6% to 14.1% of total possible
21 losses, which is in line with recoveries in other class action cases. *See, e.g.*, Richard M. Phillips
22 & Gilbert C. Miller, *The Private Securities Litigation Reform Act of 1995: Rebalancing*
23 *Litigation Risks and Rewards for Class Action Plaintiffs, Defendants and Lawyers*, 51 Bus. Law.
24 1009, 1029 & n.131 (1996) (typical recoveries are within range of 7-11% of claimed losses); *see*
25 *also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
26 that was one sixth of the plaintiffs' potential recovery). Once the potential recovery is

1 discounted for litigation risk, the risk that a far less generous damages methodology would be
2 applied by the Court, and the risk that a large judgment could not be collected at all because of
3 the bankruptcy proceedings, it is clear that the Class achieved an exceptional result.

4 **2. This Litigation Was Extremely Risky**

5 This case was fraught with risk, and recovery was far from certain. ERISA generally is a
6 specialized and complex area of the law, which is still being developed. *In re Enron Corp. Sec.,*
7 *Derivative and "ERISA" Litig.*, 228 F.R.D. 541, 565 (S.D. Tex. 2005) (finding that the
8 "complexity, expense and likely duration of the litigation . . . are self evident and exceptional").
9 As assessed by a court in awarding fees in cash balance litigation, "In short, there can be no
10 question that the risk of nonpayment in the case was extraordinarily high, much higher than in
11 the other large pension cases of which this Court is aware." *Cooper v. IBM*, No. 1981501, 2005
12 WL 1981501 *5 (S.D. Ill. Aug. 16, 2005). Judge Mark Kravitz summed up the unusual
13 complexity of ERISA cash balance litigation as part of a 122-page decision in an earlier
14 decision:

15 Regrettably, however, the answers to the issues raised by these parties are not
16 entirely clear, in large measure to do the fact that ERISA, and the regulations
17 under it, are often lamentably obscure – to describe them as a tangled web does
18 not do them justice. On top of that, there are conflicting decisions around the
19 country on identical issues, making for nationwide enterprises impossible.
20 Difficult, time-consuming and expensive litigation with uncertain results – such
21 as this case represents – is assuredly not a sensible way to manage the Nation's
22 retirement.

23 *Amara*, 534 F.Supp.2d at 295-296. Risk is to be measured at the outset of the litigation. *Fischel*,
24 307 F.3d at 1009. At the outset of this litigation, there was only a handful of ERISA disclosure
25 cases filed, often filed as secondary claims in ERISA age discrimination cases, none of which
26 had reached final resolution. See e.g. *Richards v. FleetBoston Fin. Corp.*, 427 F. Supp. 2d 150,
167 (D. Conn. 2006) (upholding age discrimination and notice claims); *In re Citigroup Pension*
Plan Erisa Litig., 470 F. Supp. 2d 323, 341 (S.D.N.Y. 2006) (same); *In re J.P. Morgan Chase*
Cash Balance Litig., 460 F. Supp. 2d 479, 488-491 (S.D.N.Y. 2006) (same). Still, Lead Counsel
believed that the facts and ERISA law supported Named Plaintiffs' claims, and that the risk

1 could be justified economically if the firm could earn substantially more in percentage
2 contingent fee than it may recover in more routine ERISA cases. Sarko Decl. ¶125. *cf. Fischel*,
3 307 F.3d at 1009 (case remanded, in part, because court failed to consider counsel's expectation
4 that they would receive a risk multiplier); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19
5 F.3d 1291, 1302 (9th Cir. 1994) ("WPPSS") (same).

6 Over the course of the litigation, ERISA age discrimination case law turned decisively in
7 the defendants' favor. Every circuit court to consider an ERISA age discrimination claim has
8 ruled in the defendants' favor. *See Hurlic v. S. Ca. Gas Co.*, 539 F.3d 1024, 1028 (9th Cir. 2008)
9 (affirming dismissal of age discrimination claim); *Hirt v. Equitable Ret. Plan for Emp.,*
10 *Managers & Agents*, 533 F.3d 102 (2d Cir. 2008) (same); *Drutis v. Rand McNally & Co.*, 499
11 F.3d 608 (6th Cir. 2007) (same); *Register v. PNC Fin. Servs. Group, Inc.*, 477 F.3d 56 (3d Cir.
12 2007) (same); *Cooper v. IBM Personal Pension Plan*, 457 F.3d 636 (7th Cir. 2006) (same).

13 Numerous courts have also dismissed Plaintiffs' ERISA § 204(h) notice claims. *Register*,
14 477 F.3d 56 (affirming dismissal of § 204(h) claim); *Thompson v. Ret. Plan for Emp. of S.C.*
15 *Johnson & Sons, Inc.*, 663 F. Supp. 2d 700 (E.D. Wis. 2009)(dismissing notice claim); *Custer v.*
16 *S. New England Tele. Co.*, No. 05-1444, 2008 WL 222558 (D. Conn. Jan. 25, 2008) (same);
17 *Rosenblatt v. United Way of Greater Houston*, 590 F. Supp. 2d 863 (S.D. Tex. 2008); *Charles v.*
18 *Pepco Holdings, Inc.*, 513 F. Supp. 2d 47 (D. Del. 2007), *aff'd*, 314 F. Appx 450 (3d Cir. 2008);
19 *Engers v. AT&T*, 428 F. Supp. 2d 213 (D.N.J. 2006); *Hirt v. Equitable Ret. Plan*, 441 F. Supp. 2d
20 516 (S.D.N.Y. 2006) (same); *In re Citigroup Inc.*, 470 F. Supp. 2d 323 (S.D.N.Y. 2006). Lead
21 Counsel's initial assessment of the high risks of cash balance litigation has been borne out by
22 events. These risks strongly support the fee requested by Lead Counsel.

23 3. The Settlement Provides Benefits Beyond the Settlement Amount

24 Resolution of this case through settlement provides the Class with the benefit of
25 substantial financial recovery without the delay inherent in continued litigation. This is
26 particularly important here given the composition of the Class -- current and former Washington

1 Mutual employees, many of whom have undoubtedly suffered significant financial hardships in
2 the recent economic downturn (including the loss of much of their retirement savings and their
3 jobs). In *Vizcaino*, the Ninth Circuit noted the potential significance of a prompt settlement for
4 “class members in need of immediate relief.” 290 F.3d at 1050 n.5.

5 **4. Lead Counsel Carried the Financial Burdens of this Litigation**

6 Lead Counsel accepted this matter on a contingent basis with the risk that counsel would
7 receive no fee or expense reimbursement. As is evident from the time and expenses they
8 invested, Lead Counsel were committed to litigating the case through trial and beyond. The case
9 was hard-fought at every turn, and as a result both expensive and time consuming. Furthermore,
10 litigating this case required Lead Counsel to forgo significant other work. Sarko Decl. ¶ 95. All
11 of “[t]hese burdens are relevant circumstances.” *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370,
12 1377 (9th Cir. 1993) (approving 25% fee award).

13 **5. Lead Counsel is Highly Skilled and Acted Efficiently**

14 Keller Rohrback is a national leader in ERISA class action litigation. The firm has
15 served as lead or co-lead counsel in most of the major ERISA breach of fiduciary duty class
16 actions, including cases against Enron, WorldCom, Countrywide and Merrill Lynch. The firm
17 also has significant experience in cash balance plan litigation in particular, serving as lead
18 counsel in the *JP Morgan* cases, and counsel in the *Citigroup* case. Descriptions of all the
19 ERISA cases in which Keller Rohrback has served as lead or co-lead counsel are provided in the
20 firm resume, attached to the Sarko Decl., Ex. D. Lead Counsel relied on its expertise in ERISA
21 class action cases to litigate this case efficiently and effectively.

22 **6. Attorneys’ Fee Awards in Other Cases Support a 21% Fee Here**

23 Courts in this Circuit have routinely awarded fees of 25% to 30% or more in common
24 fund cases. *See, e.g., Craft v. Cnty. of San Bernardino*, 624 F. Supp. 2d 1113 (C.D. Cal. 2008)
25 (awarding 25%); *Nobles v. MBNA Corp.*, No. 06-3723, 2009 WL 1854965 (N.D. Cal. June 29,
26 2009) (awarding 30%); *In re Calpine Corp. ERISA Litig.*, No. 03-01685 WL (N.D. Cal. Oct. 23,

1 2008) (Order and Final Judgment) (awarding 25%). Fees in other cash balance class actions
2 have been within this range as well. *See, e.g., Cooper v. IBM*, No. No. 99-829, 2005 WL
3 1981501 at *4, *8 (S.D. Ill. Aug. 16, 2005) (age discrimination challenge; 29% of the first \$250
4 million); *Berger v. Xerox*, 2004 WL 287902 at *2 (S.D. Ill. Jan. 22, 2004) (ERISA cash balance
5 “whipsaw” challenge; 29% fee approved); *Richards v. FleetBoston*, No. 04-1638 (D. Conn. filed
6 Sept. 3, 2004) (age discrimination and ERISA § 204(h) case, 21% fee approved).

7 Review of six of the above factors confirms that Lead Counsel’s request for 21% of the
8 common fund as an award for attorneys’ fees is reasonable. The exceptional results obtained
9 despite a vigorous defense, the high risk and complexity of this case, and the skill and efficiency
10 with which the case was brought to successful resolution all confirm the reasonableness of the
11 award.

12 **C. The Lodestar Cross-Check Confirms the Reasonableness of an Award of**
13 **21% of the Common Fund**

14 The Ninth Circuit has recognized the value of comparing the lodestar to percentage of the
15 fund approaches. “Courts may compare the two methods of calculating attorney’s fees in
16 determining whether fees are reasonable.” *Fischel*, 307 F.3d at 1007. Courts in the Ninth
17 Circuit often examine the lodestar calculation as a crosscheck on the percentage fee award to
18 ensure that counsel will not receive a “windfall.” *Vizcaino*, 290 F.3d at 1050. The cross-check
19 analysis is a two-step process. First, the lodestar is determined by multiplying the number of
20 hours reasonably expended by the reasonable rates requested by the attorneys. *See Caudle v.*
21 *Bristow Optical Co.*, 224 F.3d 1014, 1028 (9th Cir. 2000). Second, the court determines the
22 multiplier required to match the lodestar to the percentage-of-the-fund request made by counsel,
23 and determines whether the multiplier falls within the accepted range for such a case. Here, the
24 lodestar cross-check confirms that the 21% request is reasonable.

1 **1. Lead Counsel's Lodestar Is Based On Reasonable Hours Expended**
2 **and Reasonable Rates**

3 Lead Counsel and staff have spent a total of 10,395.62 hours working on this case. *See*
4 Sarko Decl. Ex. B. As reflected in the Sarko Declaration, the hours claimed were incurred by,
5 among other things, investigating the claims against Defendants, preparing the Complaint,
6 conducting legal research, working with experts, completing discovery; briefing and arguing a
7 motion to dismiss and class certification motion, and briefing a summary judgment motion; filing
8 briefs in the Bankruptcy Court for the District of Delaware, and preparing the necessary papers
9 related to the Settlement. Sarko Decl. ¶¶ 15-77. Given these activities, the complexity of the
10 legal issues, and the vigor of Defendants' defense, the hours incurred are reasonable.

11 Lead Counsel's rates, between \$300 and \$740 per hour, are reasonable based on each
12 attorney's position, experience level, and location. *See* Sarko Decl. ¶ 84, Ex. B. These rates are
13 in line with rates charged by counsel who litigate high stakes class action and ERISA class action
14 cases, and thus reflect the prevailing rates in the communities in which Lead Counsel practices or
15 on hourly rates obtained by counsel in other complex or class action litigation. Sarko Decl. ¶ 84.
16 *see Bouman v. Block*, 940 F.2d 1211, 1235 (9th Cir. 1991) (finding that declarations submitted
17 by counsel of the "prevailing market rate in the relevant community . . . [are] sufficient to
18 establish the appropriate [billing] rate for lodestar purposes"). Taking into account the several
19 factors discussed above, including the result achieved, the complexity and risk of the litigation,
20 and the skill and experience of counsel, Lead Counsel's rates are reasonable and appropriate in
21 this case. Thus, Lead Counsel's reasonable hours and reasonable rates produce a current lodestar
22 of \$3,861,549.85, and estimating and taking into account work that will be necessary following
23 final approval, a total lodestar of \$3,961,549.85.

24 **2. A Lodestar Cross-Check Also Supports the Requested Fee Award.**

25 The 1.09 and 1.06 multiplier produced by cross-checking the 21% against the current
26 \$3,861,549.85 lodestar and the \$ 3,961,549.85 estimated total lodestar falls well under the
 accepted range in the Ninth Circuit, and is eminently reasonable. *See, e.g., Vizcaino*, 290 F. 3d

1 at 1051 (approving 25% fee after lodestar crosscheck resulted in multiplier of 3.65); *Craft*, 624
2 F. Supp. 2d at 1125 (approving 25% fee award resulting in a multiplier of 5.2, and collecting
3 similar cases); *Keith v. Volpe*, 501 F. Supp. 403 (C.D. Cal. 1980) (awarding attorney fee
4 multiplier of 3.5). The modest multiplier provided by the lodestar cross-check demonstrates that
5 the percentage fee sought by Lead Counsel is reasonable, and provides little more than
6 reimbursement for the time expended on this case. For this reason, Lead Counsel requests fees
7 under the “Percentage of the Fund” method.

8 **IV. THE COURT MAY ALTERNATIVELY GRANT THE REQUESTED**
9 **AMOUNT UNDER THE LODESTAR/MULTIPLIER METHOD**

10 The Lodestar method, discussed above, yields a similar result: 10,395.62 hours for a total
11 of \$3,861,549.85, and taking into account the estimated \$100,000 in fees Plaintiffs will incur
12 going forward due to settlement administration, \$3,961,549.85. The district court may, and in
13 appropriate circumstances must, increase the lodestar calculation by using an additional
14 “multiplier” to arrive at a reasonable fee. *WPPSS*, 19 F.3d at 1299-1301 (district courts have
15 discretion to use risk multipliers to enhance the lodestar in common fund cases). For the reasons
16 stated in Sections III.B.1-2, a risk multiplier is appropriate here. Sarko Decl. ¶125. Plaintiffs
17 alternatively request that the Court grant attorneys’ fees under the lodestar method with a risk
18 multiplier of 1.09 and 1.06 (if additional estimated time is included) to award \$ 4.2 million in
19 attorney fees.

20 **V. LEAD COUNSEL SHOULD BE REIMBURSED FOR THEIR EXPENSES**
21 **AND NAMED PLAINTIFFS SHOULD BE COMPENSATED**

22 Lead Counsel also request reimbursement for the reasonable and necessary expenses
23 advanced to prosecute this litigation since its inception in January 2007. These expenses,
24 totaling \$390,124.89, are detailed in the Sarko Declaration and supporting exhibits. *See Sarko* ¶¶
25 89-90, 126-129, Ex. C. The appropriate analysis to apply in deciding which expenses are
26 compensable in a common-fund case of this type is whether the particular costs are the type
typically billed by attorneys to paying clients in the marketplace. *Harris v. Marhoefer*, 24 F.3d

1 16, 19 (9th Cir. 1994) (allowing recovery of “out-of-pocket expenses that would normally be
2 charged to a fee paying client”). The categories of expenses for which Lead Counsel seek
3 reimbursement here are the type of expenses routinely charged to hourly clients and, therefore,
4 the full requested amount should be reimbursed. *See, e.g., McPhail v. First Command Fin.
5 Planning, Inc.*, No. 05-179, 2009 WL 839841, at *8 (S.D. Cal. Mar. 30, 2009) (awarding
6 \$815,850.17 in costs to counsel).

7 Finally, Lead Counsel request that the Court award an aggregate \$65,000 in case
8 contribution awards to Named Plaintiffs for the time they have expended in representing the
9 Class Members (\$10,000 each, with \$5,000 for Mr. Buck). The criteria courts consider to
10 determine whether to reward a class representative include: (1) the risk to the class representative
11 in commencing a class action; (2) the notoriety and personal difficulties encountered; (3) the
12 amount of time and effort spent by the class representative; (4) the duration of the litigation; and
13 (5) the personal benefit, or lack thereof, enjoyed as a result of the litigation. *See Trujillo v. City
14 of Ontario*, No. 04-1015, 2009 WL 2632723 (C.D. Cal. Aug. 24, 2009).

15 Here, Named Plaintiffs fulfilled their obligations as Class Representatives. Named
16 Plaintiffs consulted regularly with Lead Counsel, attended hearings, reviewed all pleadings filed
17 on their behalf, and with the exception of Mr. Buck, sat for full day depositions. For these
18 reasons, an aggregate award of \$65,000 for the seven Named Plaintiffs is warranted. This award
19 is in line with what other courts have awarded for similar efforts. *See, e.g., Pelletz v.
20 Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1330 (W.D. Wash. 2009) (awarding \$30,000 to four
21 plaintiffs); *Razilov v. Nationwide Mut. Ins. Co.*, No. 01-1466, 2006 WL 3312024 at *3-4 (D. Or.
22 Nov. 13, 2006) (approving \$10,000 award to each class representative).

23 VI. CONCLUSION

24 Based on the foregoing, Plaintiffs respectfully request that the Court (1) award Lead
25 Counsel payment of attorneys’ fees in the amount of \$4.2 million; (2) order that litigation
26 expenses incurred by Lead Counsel be reimbursed in the amount of \$390,124.89; and (3) award

1 \$65,000 in the aggregate to Named Plaintiffs as case contribution awards.

2 DATED this 4th day of October, 2010.

3 KELLER ROHRBACK L.L.P.

4
5 By s/ Karin B. Swope

6 Lynn Lincoln Sarko, WSBA #16569

7 Derek W. Loeser, WSBA #24274

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16 *Attorneys for Named Plaintiffs and the*
17 *Subclasses*

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all known counsel of record, listed below:

Ladd B. Leavens, Fred B. Burnside, Anne E. Rea, Danielle J. Carter and Rachel Blum Niewoehner.

DATED this 11th day of October, 2010.

s/ Karin B. Swope
Derek W. Loeser, WSBA #24274
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THE HONORABLE MARSHA J. PECHMAN

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GARY BUUS, et al., individually and on behalf)
of all others similarly situated,)
Plaintiffs,)
v.)
WAMU PENSION PLAN, et al.,)
Defendants.)

No. 07-CV-00903 MJP

PLAINTIFFS' [PROPOSED] ORDER ON
AWARD OF ATTORNEYS' FEES,
EXPENSES, AND CASE
CONTRIBUTION AWARDS

ORDER

Lead Counsel is hereby awarded attorneys' fees in the amount of _____% of the Settlement Fund, which the Court finds to be fair and reasonable, and _____ in reimbursement of Lead Counsel's reasonable expenses incurred in prosecuting the action. The attorneys' fees and expenses so awarded shall be paid from the Settlement Amount pursuant to the terms of the Settlement Agreement. All fees and expenses paid to Lead Counsel shall be paid pursuant to the timing requirements described in the Settlement Agreement.

14. The Named Plaintiffs are each hereby awarded a Service Award in the amount of \$_____.

15. In making this award of attorneys' fees and reimbursement of expenses, and the Service Awards to the Named Plaintiffs, the Court has considered and found that:

1 a) The Settlement achieved as a result of the efforts of Lead Counsel has created a
2 fund of \$20,000,000 in an increase to the liabilities of the Washington Mutual Pension Plan that
3 will benefit thousands of Settlement Class members;

4 b) The Settlement Amount is an exceptional result for this case;

5 c) Lead Counsel have conducted the litigation and achieved the Settlement with
6 skill, perseverance, and diligent advocacy;

7 d) Lead Counsel carried the financial burden of this litigation;

8 e) The action involves complex factual and legal issues prosecuted over several
9 years and, in the absence of a settlement, would involve further lengthy proceedings with
10 uncertain resolution of the complex factual and legal issues;

11 f) This litigation contained considerable risk, and recovery was uncertain. Had Lead
12 Counsel not achieved the Settlement, there would remain a significant risk that the Named
13 Plaintiffs and the Settlement Class may have recovered less or nothing from Defendants;

14 g) The amount of attorneys' fees awarded and expenses reimbursed from the
15 Settlement Fund are consistent with awards in similar cases;

16 h) The Named Plaintiffs rendered valuable service to the Plan and to Settlement
17 Class members.
18

19 16. The awards and payments ordered herein will be made out of the Settlement
20 Amount and in accordance with the Settlement Agreement entered in this case.
21
22

23 _____
24 HONORABLE MARSHA PECHMAN
25 UNITED STATES DISTRICT JUDGE
26

CERTIFICATE OF SERVICE

1
2 I hereby certify that on October 4, 2010, I electronically filed the foregoing with the
3 Clerk of the Court using the CM/ECF system, which will send notice of such filing to all known
4 counsel of record, listed below:

5 Ladd B. Leavens, Fred B. Burnside, Anne E. Rea, Danielle J. Carter and Rachel Blum
6 Niewoehner.

7 DATED this 4th day of October, 2010.

8
9 s/

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