

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

IN RE WACHOVIA CORPORATION ERISA LITIGATION
THIS DOCUMENT RELATES TO: All Actions

MASTER FILE: 3:09-CV-00262-MR

CLASS ACTION SETTLEMENT AGREEMENT

This CLASS ACTION SETTLEMENT AGREEMENT (“Settlement Agreement”) is entered into by and between Plaintiffs, as defined in Section 1.15 below, on the one hand, and Defendants, as defined in Section 1.7 below, on the other. Plaintiffs and Defendants are referred to collectively in this Settlement Agreement as the “Parties.” Capitalized terms and phrases have the meanings provided in Section 1 below or as specified elsewhere in this Settlement Agreement.

1. DEFINITIONS

1.1. “Action” shall mean: *In re Wachovia Corporation ERISA Litigation*, No 3:09-CV-00262-MR, an action pending in the United States District Court for the Western District of North Carolina and any and all cases consolidated therewith.

1.2. “Agreement Execution Date” shall mean: the date on which this Settlement Agreement is fully executed.

1.3. “Case Contribution Award” shall mean: any monetary amount awarded by the Court in recognition of the Named Plaintiffs’ assistance in the prosecution of this Action and payable pursuant to Sections 11.2 and 11.3 below. Class Counsel shall not ask for an amount to exceed \$5,000.00 for each Named Plaintiff.

1.4. “Class Counsel” shall mean: Keller Rohrback L.L.P.

1.5. “Complaint” shall mean: the Consolidated Complaint for Violations of the Employee Retirement Income Security Act, filed in this Action on September 18, 2009.

1.6. “Court” shall mean: the United States District Court for the Western District of North Carolina.

1.7. “Defendants” shall mean: Wachovia Corporation, Wells Fargo & Company, John D. Baker II, Peter C. Browning, John T. Casteen III, Bill Dawson, Larry Gilmer, Jerome A. Gitt, William H. Goodwin, Jr., Maryellen C. Herringer, Rod Hoover, Robert A. Ingram, Donald M.

James, Benjamin J. Jolley, Bill Langley, Jeff Martin, Mackey J. McDonald, Shannon McFayden, Joseph Neubauer, Timothy D. Proctor, Ernest S. Rady, Robert Reid, Van L. Richey, Ruth G. Shaw, Sharon Smart, Lanty L. Smith, Robert K. Steel, Cece Sutton, G. Kennedy Thompson, Ben Williams, Thomas J. Wurtz, and Dona Davis Young.

1.8. “*Effective Date of Settlement*” shall mean: the date on which all of the conditions to settlement set forth in Section 3 of this Settlement Agreement have been fully satisfied or waived and the Settlement shall have become Final.

1.9. “*ERISA*” shall mean: the Employee Retirement Income Security Act of 1974, as amended, including all regulations promulgated thereunder.

1.10. “*Final*” shall mean: with respect to any judicial ruling or order in the Action, that the period for any appeals, petitions, motions for reconsideration, rehearing or certiorari or any other proceedings for review (“*Review Proceeding*”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that there has occurred a full and final disposition of any such Review Proceeding, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand.

1.11. “*Financial Institution*” is defined in Section 8.1.1 below.

1.12. “*Independent Fiduciary*” shall mean: a fiduciary retained pursuant to approval by the Plan Administrator for purposes of Section 3.4 and that has no “relationship to” or “interest in” (as those terms are used in the Class Exemption referred to in Section 3.4) any of the Parties.

1.13. “*Named Plaintiffs*” shall mean: David W. Allen, Robert M. Cominsky, Richard F. Dziak, Rose Hansen, Alan A. Hardman, Jerry R. Kelley, Jr., Denise A. Tuttle, and Todd A. Wright.

1.14. “*Person*” shall mean: an individual, partnership, corporation or any other form of organization.

1.15. “*Plaintiffs*” shall mean: Named Plaintiffs and each member of the Settlement Class.

1.16. “*Plan*” (when used as an adjective) or “*Plans*” (when used as a noun) shall refer to the Wachovia Savings Plan and the A.G. Edwards, Inc. Retirement and Profit Sharing Plan.

1.17. “*Plan Administrator*” shall have the meaning ascribed to it in the Plans.

1.18. “*Plan of Allocation*” is defined in Section 9.3 below.

1.19. “*Qualified Settlement Fund*” is defined in Section 8.1 below.

1.20. “*Released Claims*” shall mean, subject to Section 10 and 4.1.5 below, any and all claims of any nature whatsoever pertaining to units of investment in Wachovia stock in the Plans (including claims for any and all losses, damages, unjust enrichment, attorneys’ fees, disgorgement of fees, litigation costs, injunction, declaration, contribution, indemnification, or any other type or nature of legal or equitable relief), based on any alleged conduct prior to December 31, 2008, whether or not such claims already accrued or not, whether already acquired

or acquired in the future, whether known or unknown, in law or equity, brought by way of demand, complaint, cross-claim, counterclaim, third-party claim, or otherwise which were or could have been asserted in the Complaint and that would be barred by principles of res judicata had the claims asserted in the Complaint been fully litigated and resulted in a final judgment or order. Named Plaintiffs on behalf of themselves and on behalf of the Settlement Class hereby expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides: “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” and any and all provisions, rights and benefits of any similar statute, law or principle or common law of the United States, any state thereof, or any other jurisdiction. The Released Claims do not include any individual claim to vested benefits that are otherwise due under the terms of the Plans.

1.21. “*Releasees*” shall mean: the Defendants and any Person who served as a trustee, investment manager, service provider, record-keeper, or named or functional fiduciary (including de facto fiduciaries) of the Plans, together with, for each of the foregoing, any and all predecessors, Successors-In-Interest, present and former Representatives, direct or indirect parents and subsidiaries, attorneys and any Person that controls, is controlled by, or is under common control with any of the foregoing, including, without limitation, every person who was a director, officer, governor, management committee member, in-house counsel, employee, or agent of Wachovia Corporation, Wells Fargo & Co., and their subsidiaries and affiliates, together with, for each of the foregoing, any and all present or former Representatives, insurers, reinsurers, consultants, attorneys, administrators, employee benefit plans, investment advisors, investment underwriters, and spouses.

1.22. “*Representatives*” shall mean: representatives, attorneys, agents, directors, officers, employees, insurers and reinsurers.

1.23. “*Settlement*” shall mean: the settlement to be consummated under this Settlement Agreement pursuant to the Final Approval Order.

1.24. “*Settlement Class*” shall mean: All persons other than Defendants who were participants in or beneficiaries of the Wachovia Savings Plan at any time between May 8, 2006 and December 31, 2008 and whose Plan account included units of investment in Wachovia common stock and/or participants in or beneficiaries of the A.G. Edwards, Inc. Retirement and Profit Sharing Plan at any time between October 1, 2007 and December 31, 2008 and whose Plan account included units of investment in Wachovia common stock (collectively, the “Class Period”).

1.25. “*Successor-In-Interest*” shall mean: a Person’s estate, legal representatives, heirs, successors or assigns, and any other Person who can make a legal claim by or through such Person.

1.26. “*Term Sheet*” shall mean: the document entitled Settlement Terms dated December 8, 2010, based on which the Parties jointly moved the United States Court of Appeals for the

Fourth Circuit (the “Fourth Circuit”) to remand the Action to the Court for the purpose of review of the Settlement.

1.27. “*Wachovia*” shall mean: Wachovia Corporation and each of Wachovia’s predecessors and Successors-In-Interest.

1.28. “*Wachovia stock*” shall mean: the common stock of Wachovia Corporation.

1.29. “*Wells Fargo*” shall mean: Wells Fargo & Co. and each of Wells Fargo’s predecessors and Successors-In-Interest.

2. RECITALS

2.1. In the Complaint, Plaintiffs allege causes of action arising under section 502(a) of ERISA.

2.2. Plaintiffs allege that Defendants were fiduciaries of the Plans and that they breached fiduciary duties owed to the Plans’ participants and beneficiaries, including Named Plaintiffs, by, among other things: (a) failing to prudently and loyally manage the Plans’ investment in Wachovia stock; (b) failing to properly monitor the performance of their alleged fiduciary appointees and remove and replace those whose performance was inadequate; (c) failing to disclose necessary information to alleged co-fiduciaries; (d) failing to provide complete and accurate information regarding the soundness of Wachovia stock and the prudence of investing and holding retirement contributions in Wachovia stock; (e) failing to prevent breaches by other alleged fiduciaries of their duties of prudent and loyal management, complete and accurate communications, and adequate monitoring; and (f) knowingly participating in the alleged fiduciary breaches.

2.3. Class Counsel has conducted an extensive investigation into the facts, circumstances and legal issues associated with the allegations made in the Action. This investigation has included, *inter alia*: (a) inspecting, reviewing and analyzing documents produced by or otherwise relating to Wachovia, Wachovia stock, Defendants, and the Plans, including documents produced informally and numerous public documents, including press releases and regulatory filings; (b) researching the applicable law with respect to the claims asserted in the Action and the defenses and potential defenses thereto; (c) inspecting, reviewing and analyzing documents concerning the Plans and administration of the Plans, particularly as such documents pertain to the investment by the Plans in Wachovia stock; and (d) participating in telephonic meetings with Defendants’ counsel and in settlement negotiations presided over by an independent Mediator.

2.4. Releasees deny any and all liability to Named Plaintiffs, members of the Settlement Class and/or the Plans, and deny any and all allegations of wrongdoing made in the Action. Releasees deny that some or all of them were fiduciaries under ERISA, or were acting as ERISA fiduciaries at the time of the events complained of, or to the extent that any of them were acting as fiduciaries, that any breach of fiduciary duty occurred in connection with the investment, acquisition, or retention of Wachovia stock in the Plans. Releasees further contend that they acted prudently at all times and in all respects with regard to the Plans.

2.5. On August 6, 2010, the Court issued an opinion granting Defendants' motion to dismiss in its entirety with prejudice. On November 17, 2010, Plaintiffs filed their opening brief with the Fourth Circuit.

2.6. Class Counsel believes that the Settlement will provide a benefit to the Settlement Class, and that, when that benefit is weighed against the attendant risks of continuing the prosecution of the Action, the Settlement represents a reasonable and fair resolution of the claims of the Settlement Class. In reaching this conclusion, Class Counsel has considered, among other things, the risks of litigation (including the Court's dismissal and the Plaintiffs' appeal of that decision, as well as the risk of proving both liability and loss to the Plans, if Plaintiffs' appeal were successful); the time necessary to achieve a final resolution through litigation; the complexity of the claims set forth in the Complaint; the ability of Defendants to withstand judgment; the extent to which insurance coverage would be available; and the benefit accruing to the Plans' participants under the Settlement.

2.7. Defendants desire to resolve fully and settle with finality the Action and all of Plaintiffs' Released Claims for themselves and the Plans, thereby avoiding the risk, expense, inconvenience, burden, distraction and diversion of its personnel and resources, and uncertainty of outcome that is inherent in any litigation, associated with the Action, particularly given the fact that Wachovia stock is no longer a part of the Plans.

2.8. Plaintiffs and Defendants have thus reached this Settlement by and through their respective counsel on the terms and conditions set forth herein.

3. CONDITIONS TO EFFECTIVENESS OF THE SETTLEMENT

3.1. *Effectiveness of Settlement.* The Settlement provided for in this Settlement Agreement shall not become binding unless and until each and every one of the following conditions in Sections 3.2 through 3.8 shall have been satisfied or waived.

3.2. *Court Approval.* The Settlement contemplated under this Settlement Agreement shall have been approved by the Court, as provided for in this Section 3.2. The Parties agree jointly to recommend to the Court that it approve the terms of this Settlement Agreement and the Settlement contemplated hereunder. The Parties agree to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement, and any other steps or efforts which may become necessary by order of the Court (unless such order modifies the terms of this Settlement Agreement) or otherwise, to carry out this Settlement Agreement, including the following:

3.2.1 *Motion for Preliminary Approval of Settlement and of Notices.* The Court shall have approved the preliminary motion that the Plaintiffs filed on or before February 11, 2011 ("Preliminary Motion") by issuing an order in substantially the same form as attached hereto as Exhibit 1 (the "Preliminary Approval Order"), including the form of class notice substantially in the form attached to the Preliminary Approval Order as Exhibit A (the "Class Notice"):

- (a) preliminarily approving the Settlement embodied in this Settlement Agreement;

- (b) directing the time and manner of the Class Notice; and
- (c) finding that: (i) the proposed form of Class Notice fairly and adequately: (A) describes the terms and effect of this Settlement Agreement and of the Settlement, (B) gives notice to the Settlement Class of the time and place of the hearing of the motion for final approval of the Settlement, and (C) describes how the recipients of the Class Notice may object to approval of the Settlement; and (ii) the proposed manner of communicating the Class Notice to the members of the Settlement Class is the best notice practicable under the circumstances.

3.2.2 *Class Certification.*

(a) The Court shall have certified the Action as a class action for settlement purposes pursuant to Rule 23(b)(1) and/or (b)(2) of the Federal Rules of Civil Procedure, with Named Plaintiffs as the named Settlement Class representatives, with Keller Rohrbach L.L.P. as Class Counsel, and with a “Settlement Class” as defined above, except that this condition shall also be deemed satisfied if another member of the Settlement Class is named as Settlement Class representative.

(b) The Parties agree to stipulate to a certification of the Action as a class action for settlement purposes, pursuant to Rule 23(b)(1) and/or (b)(2) of the Federal Rules of Civil Procedure, on the foregoing terms. If the Settlement does not become Final, then no Settlement Class will be deemed to have been certified by or as a result of this Settlement Agreement, and the Action will for all purposes revert to its status as of the day immediately prior to the date on which the Term Sheet was executed.

3.2.3 *Issuance of Class Notice.* On the date and in the manner set by the Court in its Preliminary Approval Order, Class Counsel shall have caused notice of the Preliminary Approval Order to be delivered to the Settlement Class in the form and manner approved by the Court. The Parties shall confer in good faith with regard to the form of the Class Notice in an effort to utilize cost effective forms of notice. Defendants shall use their best efforts with respect to the Class Notice, including by providing the last known participant addresses and contact information in electronic spreadsheet format to the extent Defendants have such information. The Parties agree, and the form of Preliminary Approval Order attached hereto as Exhibit 1 shall provide, that the last known addresses for the Plaintiffs in the possession of the Plan’s current record-keeper will suffice for all purposes in connection with this Settlement, including, without limitation, the mailing of the Class Notice.

3.2.4 *Internet/Publication of Class Notice.* Class Counsel also shall have given Notice by publication of the Settlement Agreement and Class Notice on www.erisafraud.com and www.kellersettlements.com.

3.2.5 *The Fairness Hearing.*

- (a) On the date set by the Court in its Preliminary Approval Order, the Parties shall participate in the hearing (the “Fairness Hearing”) during or after which the Court will determine by order (the “Final Approval Order”),

attached hereto as Exhibit 2) whether: (i) the proposed Settlement between the Parties on the terms and conditions provided for in this Settlement Agreement is fair, reasonable and adequate and should be approved by the Court; (ii) final judgment should be entered (“Judgment”); (iii) the Settlement Class should be certified as a non-opt-out class meeting the applicable requirements for a settlement class imposed by Federal Rule of Civil Procedure 23; (iv) the requirements of Federal Rule of Civil Procedure 23 and due process have been satisfied in connection with the distribution of the Class Notice to members of the Settlement Class; (v) the requirements of the Class Action Fairness Act have been satisfied; (vi) the Plan of Allocation consistent with Section 9.3 shall be approved; (vii) to award reimbursement of expenses associated with dissemination of Class Notice; (viii) to award a Case Contribution Award and if so, the amount; (ix) to award attorneys’ fees and further expenses to Class Counsel and other attorneys who represent members of the Settlement Class and if so, the amounts; and (x) to approve payment from the Qualified Settlement Fund for administration fees and expenses and Settlement implementation expenses.

- (b) The Parties covenant and agree that they will reasonably cooperate with one another in obtaining an acceptable Final Approval Order at the Fairness Hearing and will not do anything inconsistent with obtaining such a Final Approval Order.

3.2.6 *Motion for Final Approval of Class Action Settlement.* On the date set by the Court in its Preliminary Approval Order, Plaintiffs shall have filed a motion (the “Final Approval Motion”) for a Final Approval Order. The Final Approval Motion shall seek the Court’s finding that the Final Approval Order is a final judgment disposing of all claims and all Parties.

3.3. *Finality of Final Approval Order.* The Final Approval Order shall have become Final.

3.4. *Determination by Independent Fiduciary.* At least ten (10) days prior to the Fairness Hearing, the Independent Fiduciary shall have approved and authorized in writing the Settlement in accordance with Prohibited Transaction Exemption 2003-39, “Release of Claims and Extensions of Credit in Connection with Litigation,” issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632 (the “Class Exemption”) and proposed amendment to Prohibited Transaction Exemption 2003-39, issued November 21, 2007, by the United States Department of Labor, 72 Fed. Reg. 65,597. If the Independent Fiduciary disapproves or otherwise does not authorize the Settlement, then the Settlement Agreement shall terminate and become null and void and the provisions of Section 10.2 shall apply; *provided*, however, that the Settlement Agreement shall not terminate and become null and void and the provisions of Section 10.2 shall not apply if the Parties, through their counsel, agree in writing prior to the Fairness Hearing to modify the Settlement to satisfy objections by the Independent Fiduciary to the Settlement, or, at the sole election of Defendants, Defendants agree that Section 3.4 shall not be a condition precedent to the Settlement becoming Final.

3.4.1 The Independent Fiduciary's fees and expenses shall be paid by Wells Fargo separate and apart from the Qualified Settlement Fund. The Independent Fiduciary shall acknowledge in writing that it is a fiduciary with respect to the Settlement of this Action on behalf of the Plans. The Defendants and Class Counsel will comply with reasonable requests for non-privileged information made by the Independent Fiduciary that are for the purpose of reviewing and evaluating the Settlement Agreement.

3.5. *Compliance with the Class Action Fairness Act.* The Court shall have determined that Defendants complied with the Class Action Fairness Act of 2005 ("CAFA") and its notice obligations by providing appropriate federal and state officials with information about the Settlement.

3.6. *Dismissal of Action.* The Action shall have been dismissed with prejudice as against Defendants on the Effective Date of Settlement.

3.7. *Funding of Class Settlement Amount.* Pursuant to Paragraph 1 of the Term Sheet, Wells Fargo deposited twelve million three hundred fifty thousand dollars (\$12,350,000) into the Qualified Settlement Fund (defined below in Section 8.1) on February 9, 2011.

3.8. *No Termination.* The Settlement shall not have terminated pursuant to Section 10 below.

3.9. *Materiality of Settlement Conditions.* The Parties expressly acknowledge that this Settlement is specifically conditioned upon the occurrence of each and every one of the foregoing conditions precedent prior to the Effective Date of Settlement, and that a failure of any condition set forth in Sections 3.1 through 3.8 above at any time prior to the Effective Date of Settlement shall make this Settlement Agreement, and any obligation to pay the twelve million three hundred fifty thousand dollars (\$12,350,000), or any portion thereof, null, void, and of no force and effect.

4. RELEASES AND COVENANT NOT TO SUE

4.1. *Release By Named Plaintiffs, Settlement Class and the Plans.*

4.1.1 *Releases of the Releasees.* Subject to Section 10 and 4.15 below, upon the Effective Date of Settlement, Named Plaintiffs on behalf of themselves and on behalf of the Settlement Class absolutely and unconditionally release and forever discharge the Releasees from any and all Released Claims that Plaintiffs or the Settlement Class directly, indirectly, derivatively, or in any other capacity ever had, now have or hereafter may have.

4.1.2 *Plans Release.* Subject to Section 10 and 4.15 below, upon the Effective Date of Settlement, the Independent Fiduciary's approval of the Settlement shall constitute a release of any and all Released Claims the Plans may have against any and all Releasees.

4.1.3 *Defendants' Releases of Named Plaintiffs, the Settlement Class and Class Counsel.* Subject to Section 10 and 4.15 below, upon the Effective Date of Settlement, Defendants absolutely and unconditionally release and forever discharge the Named Plaintiffs, the Settlement Class and Class Counsel from any and all claims relating to the institution or prosecution of the Action.

4.1.4 *Releasees' Release of Other Releasees.* Subject to Section 10 and 4.15 below, upon the Effective Date of Settlement, each of the Releasees also releases each of the other Releasees from any and all Claims which were asserted in the Complaint or any pleading which would have been required to be filed in the Action or that would be barred by principles of res judicata had the claims asserted in the Complaint or any such other pleading in the Action been fully litigated and resulted in a final judgment or order.

4.1.5 *Claims Not Released.* This Settlement Agreement does not in any way bar, limit, waive, or release any right by members of the Settlement Class to recover any moneys resulting from a judgment in or settlement of the actions captioned: *In re Wachovia Equity Sec. Litig.*, No. 08-6171 (S.D.N.Y.); *In re Wachovia Preferred Sec. & Bond Notes Litig.*, No. 09-6351 (S.D.N.Y.); *Stichting Pensioenfonds ABP v. Wachovia Corp., et al.*, No. 09-4473 (S.D.N.Y.); and *FC Holdings AB v. Wells Fargo & Company, et al.*, No. 09-5466 (S.D.N.Y.). However, Section 4.1.5 shall not permit any member of the Settlement Class to recover more than 100% of his or her losses.

5. COVENANTS

Named Plaintiffs, on their own behalves and on behalf of the members of the Settlement Class, the Plans, and Defendants, hereby covenant as follows:

5.1. *Taxation of Class Settlement Amount.* Named Plaintiffs acknowledge that neither Defendants, Releasees nor any of their Representatives or Successors-In-Interest shall have any responsibility for any taxes due on the Qualified Settlement Fund, or on any funds that the Plans, members of the Settlement Class, or Named Plaintiffs receive from the Qualified Settlement Fund. Nothing herein shall constitute an admission or representation that any taxes will or will not be due on the Qualified Settlement Fund or any allocation or distribution therefrom.

5.2. *Cooperation.*

5.2.1 Wells Fargo shall use its best efforts to provide Class Counsel with the names and last known addresses of members of the Settlement Class in electronic spreadsheet format (to the extent Wells Fargo has such information) as soon as reasonably possible upon entry of the Preliminary Approval Order. No charge against the Qualified Settlement Fund shall be made by Defendants for the gathering or the provision of such information. Such information shall be used to deliver the Class Notice, and implement the Settlement, including the Plan of Allocation, and for no other purpose.

5.2.2 Class Counsel anticipates receiving inquiries from Plan participants concerning whether they are members of the Settlement Class. To the extent that such persons are not included in the information provided in the paragraph immediately above, Wells Fargo and/or its Representative will reasonably assist Class Counsel in determining whether such persons are or are not members of the Settlement Class.

5.2.3 Wells Fargo and/or its Representative shall implement the Plan of Allocation (as discussed and defined in Section 9.3). Expenses of the implementation of the Settlement and the Plan of Allocation shall be paid by, and shall be the sole responsibility of, Wells Fargo.

6. REPRESENTATIONS AND WARRANTIES

6.1. *Parties' Representations and Warranties.*

6.1.1 Named Plaintiffs represent and warrant that they have not assigned or otherwise transferred any interest in any Released Claims against any Releasee, and further covenant that they will not assign or otherwise transfer any interest in any Released Claims.

6.1.2 Named Plaintiffs represent and warrant that they shall have no surviving claim or cause of action against any of the Releasees with respect to the Released Claims against them.

6.1.3 The Parties, and each of them, represent and warrant that they are voluntarily entering into this Settlement Agreement as a result of arm's-length negotiations among their counsel; in executing this Settlement Agreement they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; except as expressly stated herein, they have not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations, statements or omissions pertaining to any of the foregoing matters by any other Party or its Representatives; and each Party assumes the risk of mistake as to facts or law.

6.1.4 The Parties, and each of them, represent and warrant that they have carefully read the contents of this Settlement Agreement; they have made such investigation of the facts pertaining to the Settlement, this Settlement Agreement and all of the matters pertaining thereto as they deem necessary; and this Settlement Agreement is signed freely by each Person executing this Settlement Agreement on behalf of each of the Parties.

6.2. *Signatories' Representations and Warranties.* Each individual executing this Settlement Agreement on behalf of any other Person does hereby personally represent and warrant to the other Parties that he or she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal which such individual represents or purports to represent.

7. NO ADMISSION OF LIABILITY

The Parties understand and agree that this Settlement Agreement embodies a compromise and settlement of disputed claims, and that nothing in this Settlement Agreement, including the furnishing of consideration for this Settlement Agreement, shall be deemed to constitute any finding of fiduciary status under ERISA or wrongdoing by any of the Releasees, or give rise to any inference of fiduciary status under ERISA or wrongdoing or admission of wrongdoing or liability in this or any other proceeding. This Settlement Agreement and the payment made hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal or factual. Moreover, the Releasees specifically deny any such liability or wrongdoing. Neither the fact nor the terms of this Settlement Agreement shall be offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Settlement Agreement or arising out of or relating to the Final Order.

8. THE QUALIFIED SETTLEMENT FUND; DELIVERIES INTO THE QUALIFIED SETTLEMENT FUND ACCOUNT

8.1. *The Qualified Settlement Fund.*

8.1.1 As noted above in Section 3.7, Wells Fargo deposited twelve million three hundred fifty thousand dollars (\$12,350,000) into the Qualified Settlement Fund February 9, 2011. The Qualified Settlement Fund is an interest-bearing account at Wells Fargo Bank, National Association (the "Financial Institution") and shall be considered a common fund created as a result of the Action.

8.1.2 The Qualified Settlement Fund shall bear interest for the benefit of the Settlement Class, shall be structured and managed to qualify as a Qualified Settlement Fund under Section 468B of the Internal Revenue Code and Treasury regulations promulgated thereunder, and shall contain customary provisions for such funds, including obligations of the Qualified Settlement Fund to make tax filings and to provide reports to Parties concerning taxes. The Parties shall cooperate to ensure such treatment and shall not take a position in any filing or before any tax authority inconsistent with such treatment. The Parties agree that the Qualified Settlement Fund will pay any federal, state and local taxes that may apply to the income of the Qualified Settlement Fund. Class Counsel shall arrange for the preparation and filing of all tax reports and tax returns required to be filed by the Qualified Settlement Fund and for the payment from the Qualified Settlement Fund of any taxes owed. Class Counsel shall be authorized to retain a certified public accounting firm for those purposes. All taxes on the income of the Qualified Settlement Fund and tax-related expenses incurred in connection with the taxation of the Qualified Settlement Fund shall be paid out of the Qualified Settlement Fund, shall be considered a cost of administration of the Settlement, and shall be timely paid without further order of the Court. Class Counsel shall arrange for the preparation and issuance of any required Forms 1099 to Named Plaintiffs and members of the Settlement Class receiving payments from the Qualified Settlement Fund, and costs incurred in connection therewith also shall be paid out of the Qualified Settlement Fund, shall be considered a cost of administration of the Settlement, and shall be timely paid by the Qualified Settlement Fund without further order of the Court. The Parties agree that neither Defendants nor any Releasee has any responsibility, authority, or liability respecting the operation and administration of the Qualified Settlement Fund.

8.1.3 Class Counsel agrees to structure the Qualified Settlement Fund to the extent possible to preserve for the Settlement Class the tax benefits associated with retirement plans.

8.2. *The Class Settlement Amount.*

8.2.1 As noted above in Section 3.7, Wells Fargo deposited twelve million three hundred fifty thousand dollars (\$12,350,000) into the Qualified Settlement Fund on February 9, 2011.

8.2.2 The twelve million three hundred fifty thousand dollars (\$12,350,000) deposited in the Qualified Settlement Fund pursuant to Section 8.1 and 8.2.1 above, plus all interest income earned thereon and less expenditures authorized under this Settlement Agreement, shall constitute the "Class Settlement Amount."

8.2.3 The Parties acknowledge and agree that Releasees shall not have authority or liability in connection with the management, investment, maintenance or control of the Qualified Settlement Fund. The Final Approval Order shall specify the time at which the Plans takes control of the Class Settlement Amount, and the time for allocation and distribution of the Class Settlement Amount to members of the Settlement Class in accordance with the Court's Final Approval Order.

8.3. *Sole Monetary Contribution.* The twelve million three hundred fifty thousand dollars (\$12,350,000) shall be the full and sole monetary contribution and consideration made by or on behalf of Releasees in connection with the Action and Settlement. The twelve million three hundred fifty thousand dollars (\$12,350,000) specifically satisfies any claims for costs and attorneys' fees by Class Counsel, claims for Case Contribution Awards to Named Plaintiffs, any costs or expenses of the Class Notice, and all taxes on the Qualified Settlement Fund, in addition to any amounts to be distributed to the Plans pursuant to this Settlement. Except as set forth in Section 11 below, as otherwise specified in this Settlement Agreement, or as provided for in any applicable contract of insurance or other written agreement between the Parties, the Parties shall bear their own costs and expenses (including attorneys' fees) in connection with effectuating the Settlement and securing all necessary court orders and approvals with respect to same.

9. EFFECTIVE DATE OF SETTLEMENT; RELEASE OF THE CLASS SETTLEMENT AMOUNT

9.1. *Establishment of Effective Date of Settlement.* If Plaintiffs and Defendants disagree as to whether each and every condition set forth in Section 3 has been satisfied or waived, they shall promptly confer in good faith and, if unable to resolve their differences within five (5) business days thereafter, shall present their disputes for determination to the Court, which shall retain jurisdiction for this purpose. No portion of the Class Settlement Amount shall be distributed in the event of such a dispute pending the Court's ruling. Disbursement shall thereafter be made by the Financial Institution pursuant to the Court's order.

9.2. *Disbursement from Qualified Settlement Fund for Payment of Class Notice.*

9.2.1 Except as provided in Section 9.2.2 below, no distribution of any part, or all, of the Class Settlement Amount shall be made from the Qualified Settlement Fund until the Financial Institution has received: (a) a joint notice signed by Class Counsel and by counsel for Defendants, directing that the Class Settlement Amount be disbursed and designating the appropriate recipient(s); or (b) a Court Order, directing that the Class Settlement Amount be disbursed and designating the appropriate recipient(s).

9.2.2 After entry of the Preliminary Approval Order, Class Counsel shall promptly direct the Financial Institution in writing to disburse from the Qualified Settlement Fund an amount approved by the Court, but not to exceed \$250,000, for the payment of reasonable costs of the notice contemplated under Sections 3.2.3 and 3.2.4 above. If the Settlement Agreement is terminated or the Settlement does not become Final for any other reason after the expenditure of such disbursed funds consistent with Section 3.2.3, Class Counsel shall have no obligation to reimburse such expended funds to the Qualified Settlement Fund.

9.3. *Plan of Allocation of Class Settlement Amount.* The distribution of the Class Settlement Amount to the Plan participants shall be made in accordance with the plan of allocation (the “Plan of Allocation”) to be proposed by Class Counsel and approved by the Court.

9.3.1 Prior to submission to the Court along with the Preliminary Motion, Plaintiffs shall provide a copy of the Plan of Allocation to Defendants for review and comment.

9.3.2 As noted above in Section 5.2.3, Wells Fargo and/or its Representative shall implement the Plan of Allocation.

9.3.3 Expenses of the implementation of the Settlement and of the Plan of Allocation shall be paid by, and shall be the sole responsibility of, Wells Fargo.

9.3.4 Notwithstanding anything in this Settlement Agreement to the contrary, the Plan of Allocation is a matter separate and apart from the Settlement between the Parties, and no decision by the Court concerning the Plan of Allocation shall affect the validity of the Settlement Agreement or finality of the proposed Settlement in any manner.

9.3.5 Wells Fargo and/or its Representative shall be responsible for implementing the Plan of Allocation and distributing the Class Settlement Amount to members of the Settlement Class pursuant to the approved Plan of Allocation and any related order of the Court. Wells Fargo and/or its Representatives shall have no liability in this regard provided they do so according to the terms of the Plan of Allocation.

9.3.6 Class Counsel and Plaintiffs shall have no responsibility or liability for calculating the amounts payable to the members of the Settlement Class. Nor shall Class Counsel and Plaintiffs have any responsibility or liability for distributing the Class Settlement Amount to the members of the Settlement Class.

9.3.7 In the event that Defendants or Class Counsel determine that it is necessary to modify the Plan of Allocation, Class Counsel and Defendants shall jointly discuss such modification and determine whether the modification is reasonable and appropriate under the circumstances. The Parties will jointly petition the Court for approval of any such material modification.

9.3.8 All inquiries by members of the Settlement Class concerning the amount distributed to a particular member of the Settlement Class shall be handled in the first instance by Class Counsel. Class Counsel and Wells Fargo and/or its Representative shall work cooperatively to resolve any such inquiries. Upon request by Class Counsel, Wells Fargo and/or its Representative will provide Class Counsel with the individual class members’ distribution calculations – or a summary thereof – in order for Class Counsel to respond to such inquiries.

10. TERMINATION OF THE SETTLEMENT AGREEMENT

10.1. *Termination By Defendants.* Defendants may terminate this Settlement Agreement if, before the issuance of the Final Approval Order, the DOL files any objection to the Settlement Agreement or Settlement in any court, brings a claim against any of the Releasees, or notifies any Releasee that it intends to file such a claim. Defendants also may terminate this Settlement

Agreement if, before the issuance of the Final Approval Order, a member of the Settlement Class brings a claim against any of the Releasees, or notifies any Releasee that it intends to file such a claim.

10.2. *Automatic Termination.* This Settlement Agreement shall automatically terminate, and thereupon become null and void, in the following circumstances:

10.2.1 If the Court declines to approve the Settlement, and if such order declining approval has become Final, then this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the date that any such order becomes Final, provided, however, that if the Court declines to approve the Settlement for any reason, the Parties shall negotiate in good faith to cure any deficiency identified by the Court, and further provided that if necessary to cure any such deficiency, Class Counsel shall re-submit within a reasonable time the Preliminary or Final Approval Motion with an additional or substitute member of the Settlement Class as a named Class Representative.

10.2.2 If the Court issues an order in the Action modifying the Settlement Agreement, and if within thirty-one (31) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Court or by the Parties, then, provided that no appeal is then pending from such ruling, this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the thirty-first day after issuance of the order referenced in this Section.

10.2.3 If the Fourth Circuit reverses the Court's order approving the Settlement, and if within ninety-one (91) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Fourth Circuit or by the Parties, then, provided that no appeal is then pending from such ruling, this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the ninety-first day after issuance of the Fourth Circuit order referenced in this Section.

10.2.4 If the Supreme Court of the United States reverses or remands a Fourth Circuit order approving the Settlement, and if within thirty-one (31) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Supreme Court or by the Parties, then this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the thirty-first day after issuance of the U.S. Supreme Court order referenced in this Section 10.2.4.

10.2.5 If an appeal is pending of an order declining to approve the Settlement Agreement or modifying this Settlement Agreement, this Settlement Agreement shall not be terminated until final resolution or dismissal of any such appeal, except by written agreement of the Parties.

10.3. *Consequences of Termination of the Settlement Agreement.* If the Settlement Agreement is terminated and rendered null and void for any reason, the following shall occur:

10.3.1 Within three (3) days after the date of termination of the Settlement Agreement, Class Counsel shall notify the Financial Institution in writing to return to Defendants the Qualified Settlement Fund and all net income earned thereon, after deduction of the amount earlier disbursed for the Class Notice and any other disbursements authorized pursuant to the

Settlement Agreement, and direct the Financial Institution to effect such return as soon as possible.

10.3.2 The Action shall for all purposes with respect to the Parties revert to its status as of the day immediately prior to the execution of the Term Sheet. The Parties will cooperate in trying to return the Action to the Fourth Circuit for decision on the matters pending before the Fourth Circuit at the time of execution of the Term Sheet. The Parties agree that Plaintiffs will not be deemed to have waived their right to appeal the Court's August 6, 2010 dismissal of the Complaint.

10.3.3 All Releases given or executed pursuant to the Settlement Agreement shall be null and void; none of the terms of the Settlement Agreement shall be effective or enforceable, except those provisions providing for reimbursement of costs as set forth in Section 10.3.1; neither the fact nor the terms of the Settlement Agreement shall be offered or received in evidence in this Action or in any other action or proceeding for any purpose, except in an action or proceeding arising under this Settlement Agreement.

11. ATTORNEYS' FEES AND EXPENSES; NAMED PLAINTIFFS' CASE CONTRIBUTION AWARDS

11.1. *Application for Fees, Expenses, and Case Contribution Awards.* As provided in Section 3.2.5 above, and pursuant to the common fund doctrine, Class Counsel shall petition the Court no later than twenty-one (21) days prior to the Fairness Hearing for an award of attorneys' fees and Case Contribution Awards, and for reimbursement of expenses, to be paid from the Class Settlement Amount. The Case Contribution Awards and attorneys' fees, if any amounts are awarded by the Court, shall be paid from the Qualified Settlement Fund. Defendants, their Representatives and Successors-In-Interest expressly agree not to contest or take any position with respect to any application for attorneys' fees and expenses incurred by Class Counsel with respect to this Settlement, and acknowledge that these matters are left to the sound discretion of the Court. Defendants, their Representatives, and Successors-in-Interests also expressly agree not to contest or take any position with respect to the Case Contribution Awards, provided that Class Counsel does not ask for an amount to exceed \$5,000.00 for each Named Plaintiff.

11.2. *Disbursement of Fees, Expenses, and Case Contribution Awards.* Attorneys' fees and expenses, and Case Contribution Awards as awarded by the Court shall be payable to Class Counsel out of the Qualified Settlement Fund within seven (7) business days after the Court's entry of a judgment awarding such attorneys' fees and expenses, regardless of the existence of any objection to or appeal of the Settlement and/or the award of attorneys' fees and expenses. The Case Contribution Awards shall be payable from the Qualified Settlement Fund and shall be in addition to any portion of the Qualified Settlement Fund the Named Plaintiffs would otherwise be entitled to receive as members of the Settlement Class.

11.3. *Payment of Attorneys' Fees and Expenses and Case Contribution Awards Prior to the Settlement Becoming Final.* In the event that attorneys' fees and expenses are paid before the Settlement becomes Final, Class Counsel shall provide to the Qualified Settlement Fund, and serve a copy on Counsel for Defendants, a surety bond or letter of credit in the amount of such attorneys' fees and expenses and Case Contribution Awards, to be held pending the Settlement

becoming Final. If the Settlement Agreement is terminated pursuant to Section 10 above, or if there is a Final order reversing the award of fees and/or Case Contribution Awards, Class Counsel shall redeposit into the Qualified Settlement Fund the attorneys' fees and expenses and Case Contribution Awards originally paid out of the Qualified Settlement Fund, plus interest accrued thereon, at a rate equal to the rate of interest earned by the Qualified Settlement Fund during the same period. Such a repayment will be due within ten (10) days of a request by Defendants. If Class Counsel fails to redeposit the attorneys' fees and expenses and Case Contribution Awards and interest upon such request, at the direction of counsel for the Defendants, absent cure by Class Counsel, the surety bond may be forfeited or the letter of credit called due, and the forfeited amount shall be deposited into the Qualified Settlement Fund. Class Counsel shall remain obligated for any shortfall in the amount of attorneys' fees and expenses and Case Contribution Awards and interest after the proceeds from the surety bond or letter of credit has been applied.

12. MISCELLANEOUS PROVISIONS

12.1. *Jurisdiction.* The Court shall retain jurisdiction over all Parties to resolve any dispute that may arise regarding this Settlement Agreement or the orders and notice referenced in Section 3 above, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Settlement Agreement.

12.2. *Governing Law.* This Settlement Agreement shall be governed by the laws of the United States, including federal common law, except to the extent that, as a matter of federal law, state law controls, in which case North Carolina law will apply without regard to conflict of law principles.

12.3. *Severability.* The provisions of this Settlement Agreement are not severable.

12.4. *Amendment.* Before entry of a Final Approval Order, the Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties. Following entry of a Final Approval Order, the Settlement Agreement may be modified or amended only by written agreement signed on behalf of all Parties, and approved by the Court.

12.5. *Waiver.* The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

12.6. *Construction.* None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

12.7. *Principles of Interpretation.* The following principles of interpretation apply to this Settlement Agreement:

12.7.1 *Headings.* The headings of this Settlement Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Settlement Agreement.

12.7.2 *Singular and Plural.* Definitions apply to the singular and plural forms of each term defined.

12.7.3 *Gender.* Definitions apply to the masculine, feminine, and neuter genders of each term defined.

12.7.4 *References to a Person.* References to a Person are also to the Person's permitted successors and assigns.

12.7.5 *Terms of Inclusion.* Whenever the words "include," "includes" or "including" are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

12.8. *Further Assurances.* Each of the Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this Settlement Agreement.

12.9. *Survival.* All representations, warranties and covenants set forth in this Settlement Agreement shall be deemed continuing and shall survive the Effective Date of Settlement.

12.10. *Notices.* Any notice, demand or other communication under this Settlement Agreement (other than notices to members of the Settlement Class) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipient as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier:

A. IF TO NAMED PLAINTIFFS:

Lynn Lincoln Sarko
Derek W. Loeser
Erin M. Riley
Benjamin Gould
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Phone: (206) 623-1900
Fax: (206) 623-3384

B. IF TO DEFENDANTS:
Howard Shapiro
PROSKAUER ROSE LLP
650 Poydras Street, Suite 1800
New Orleans, LA 70130

Myron D. Rumeld
Russell L. Hirschhorn
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036

Mark W. Merritt
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246

Any Party may change the address at which it is to receive notice by written notice delivered to the other Parties in the manner described above.

12.11. *Entire Agreement.* This Settlement Agreement contains the entire agreement among the Parties relating to this Settlement. It specifically supersedes any settlement terms or settlement agreements relating to Defendants that were previously agreed upon orally or in writing by any of the Parties, including the terms of the Term Sheet.

12.12. *Counterparts.* This Settlement Agreement may be executed by exchange of faxed executed signature pages, and any signature transmitted by facsimile for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

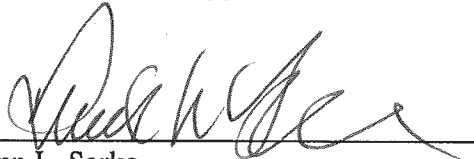
12.13. *Binding Effect.* This Settlement Agreement binds and inures to the benefit of the parties hereto, their assigns, heirs, administrators, executors and Successors-in-Interest.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates set forth below.

FOR NAMED PLAINTIFFS AND THE SETTLEMENT CLASS

Dated this 10th day of February, 2011.

By: _____


Lynn L. Sarko
Derek W. Loeser
Erin M. Riley
Benjamin Gould

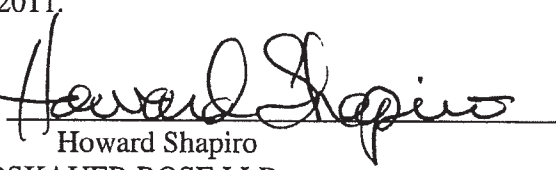
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Plaintiffs' Interim Lead Counsel

FOR ALL DEFENDANTS

Dated this 10th day of February, 2011.

By: _____


Howard Shapiro
PROSKAUER ROSE LLP
650 Poydras Street, Suite 1800
New Orleans, LA 70130

Myron D. Rumeld
Russell L. Hirschhorn
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036

Mark W. Merritt
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246

Attorneys for All Defendants

FIRST AMENDMENT TO THE CLASS ACTION SETTLEMENT AGREEMENT

The Class Action Settlement Agreement executed on February 10, 2011, is hereby amended as follows:

Section 9.3.6 of the Agreement now reads as follows:

9.3.6 Class Counsel and Plaintiffs shall have no responsibility for calculating the amounts payable to the members of the Settlement Class. Nor shall Class Counsel and Plaintiffs have any responsibility for distributing the Class Settlement Amount to the members of the Settlement Class.

All other terms and conditions to the February 10, 2011, Class Action Settlement remain in effect unless expressly amended herein.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to the Class Action Settlement Agreement on the dates set forth below.

FOR NAMED PLAINTIFFS AND THE SETTLEMENT CLASS

Dated this 28th day of February, 2011.

By: Erin Riley

Lynn L. Sarko
Derek W. Loeser
Erin M. Riley
Benjamin Gould

KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Plaintiffs' Interim Lead Counsel

FOR ALL DEFENDANTS

Dated this 28th day of February, 2011.

By: Erin Riley for (with permission)
Howard Shapiro

PROSKAUER ROSE LLP
650 Poydras Street, Suite 1800
New Orleans, LA 70130

Myron D. Rumeld
Russell L. Hirschhorn
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036

Mark W. Merritt
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246

Attorneys for All Defendants

SECOND AMENDMENT TO THE CLASS ACTION SETTLEMENT AGREEMENT

The Class Action Settlement Agreement executed on February 10, 2011, is hereby amended as follows:

4.1.5 Claims Not Released. This Settlement Agreement does not in any way bar, limit, waive, or release any right by members of the Settlement Class to recover any moneys resulting from a judgment in or settlement of the actions captioned: *In re Wachovia Equity Sec. Litig.*, No. 08-6171 (S.D.N.Y.); and *In re Wachovia Preferred Sec. & Bond Notes Litig.*, No. 09-6351 (S.D.N.Y.); *Stichting Pensioenfonds ABP v. Wachovia Corp., et al.*, No. 09-4473 (S.D.N.Y.); *FC Holdings AB v. Wells Fargo & Company, et al.*, No. 09-5466 (S.D.N.Y.), provided that Section 4.1.5 shall not permit any member of the Settlement Class to recover more than 100% of his or her losses with regard to the above listed cases. In addition, this Settlement Agreement does not in any way bar, limit, waive, or release any right by members of the Settlement Class to recover any moneys resulting from a judgment in or settlement of the actions captioned *Browne v. Thompson*, No. COA 11-852; and *Ehrenhaus v. Baker*, No. COA 10-1034, provided that such recovery does not result from any claim under or preempted by ERISA. The question of the extent, if any, to which a class members' recovery in this case constitutes a reduction in the gross amount of any claim asserted by or on behalf of any person in the *Browne* and *Ehrenhaus* matters, is to be determined in the *Browne* and *Ehrenhaus* matters, and Defendants and class members reserve all rights with respect to positions they may take on that question in those actions.

All other terms and conditions to the February 10, 2011, Class Action Settlement remain in effect unless expressly amended herein.

Exhibit A

IN WITNESS WHEREOF, the Parties have executed this Second Amendment to the Class Action Settlement Agreement on the dates set forth below.

FOR NAMED PLAINTIFFS AND THE SETTLEMENT CLASS

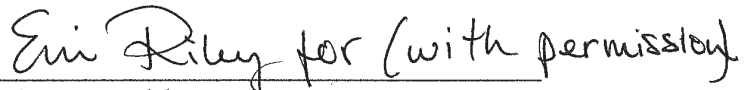
DATED this 6th day of September, 2011.



Lynn L. Sarko
Derek W. Loeser
Erin M. Riley
Benjamin Gould
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900
Facsimile: (206) 623-3384

FOR ALL DEFENDANTS

Dated this 6th day of September, 2011.



Myron D. Rumeld
Russell L. Hirschhorn
PROSKAUER ROSE LLP
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New York, NY 10036
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