The Federa	Deposit Insurance Corporation, et al v. Killinger et al		•
1		Judge Marsha J. Pechman	
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8	UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON		
9	AT SEATTLE		
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11	THE FEDERAL DEPOSIT INSURANCE CORPORATION, as RECEIVER of) No.: 2:11-cv-00459-MJP	
12	WASHINGTON MUTUAL BANK,))) DECLADATION OF STEVEN D	
13	Plaintiff,	 DECLARATION OF STEVEN P. CAPLOW IN SUPPORT OF 	
14	V.) DEFENDANTS' MOTION FOR A) REASONABLENESS	
15	KERRY K. KILLINGER, STEPHEN J.) DETERMINATION AND ENTRY) OF FINAL JUDGMENT OF	
16 17	ROTELLA, DAVID C. SCHNEIDER, LINDA C. KILLINGER, and ESTHER T. ROTELLA,) DISMISSAL PURSUANT TO) SETTLEMENT	
17	Defendants.)) Note on Motion Calendar:	
19) February 24, 2012	
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27	CAPLOW DECLARATION ISO DEFS.' MOT. FOR		1
	REASONABLENESS DETERM. AND ENTRY OF JUDGMENT NO.: 2:11-CV-00459-MJP		Dockets.Ju

I, Steven P. Caplow, declare:

 I am a member at the law firm of Davis Wright Tremaine LLP and counsel of record in this action. I make this declaration in support of Defendants Kerry K. Killinger, Stephen J. Rotella, David C. Schneider, Linda C. Killinger and Esther T. Rotella's ("Defendants") Motion for Reasonableness Determination and Entry of Final Judgment of Dismissal Pursuant to Settlement, filed concurrently herewith. I am familiar with the facts set forth herein and could and would testify thereto if necessary.

2. Attached hereto as **Exhibit A** is a true and correct copy of the December 13, 2011 Settlement and Release Agreement between the Defendants and The Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank (individually, the "FDIC," and collectively with the Defendants, the "Parties").

3. Attached hereto as **Exhibit B** is a proposed Final Judgment of Dismissal Pursuant to Settlement.

4. Attached hereto as **Exhibit** C is a true and correct copy of the Declaration of the Hon. Layn R. Phillips (U.S. District Judge, Ret.), the mediator who facilitated the Parties' settlement, dated February 22, 2012.

5. Attached hereto as **Exhibit D** is a true and correct copy of an Order dated February 15, 2012, issued in the Washington Mutual, Inc. ("WMI") chapter 11 bankruptcy proceedings in the United States Bankruptcy Court, District of Delaware, granting the debtor's motion for An Order Pursuant to Section 105(a) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure (I) Approving Settlement Agreement in FDIC Litigation and Authorizing the Debtors' Consummation thereof and (II) Modifying Automatic Stay under Section 362 of the Bankruptcy Code, as Necessary, to Allow Payment of Settlement Amount under Directors and Officers Insurance Policies ("9019 Motion"), approving the Settlement Agreement in this action.

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CAPLOW DECLARATION ISO DEFS.' MOT. FOR REASONABLENESS DETERM. AND ENTRY OF JUDGMENT NO.: 2:11-CV-00459-MJP

1	6. Attached hereto as Exhibit E are excerpts of the Second Amended and Restated		
2	Settlement Agreement, dated as of February 7, 2011, between the WMI debtors, JPMC, the		
3	FDIC in its capacity of receiver and corporate, and the official committee of unsecured creditors.		
4	7. Attached hereto as Exhibit F is a copy of the service list for the 9019 Motion		
5	filed with the Bankruptcy Court (Exh. C to the 9019 Motion).		
6	8. Attached hereto as Exhibit G is a Certificate of Non-Objection, certifying that no		
7	objections were filed to the WMI debtors' 9019 Motion were filed.		
8	I declare under penalty of perjury that the foregoing is true and correct. Executed this		
9	24th day of February 2012.		
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11	<u>s/ Steven P. Caplow</u> Steven P. Caplow		
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27	CAPLOW DECLARATION ISO DEFS.' MOT. FOR REASONABLENESS DETERM. AND ENTRY OF JUDGMENT 3 NO.: 2:11-CV-00459-MJP 2		

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CERTIFICATE OF SERVICE

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2	I hereby certify that on February 24, 2012, the foregoing was electronically filed with the		
3	Clerk of the Court using the CM/ECF system which will send notification of such filing to all		
4	counsel of record who receive CM/ECF notification, and that the remaining parties shall be		
5	served in accordance with the Federal Rules of Civil Procedure.		
6	DATED this 24 th day of February, 2012	2.	
7		Davis Wright Tremaine LLP	
8		By <u>s/ Steven P. Caplow</u>	
9		Steven P. Caplow, WSBA #19843	
10		Suite 2200 1201 Third Avenue	
11		Seattle, Washington 98101-3045 Tel: (206) 757-8018	
12		Fax: (206) 757-7108 E-mail: stevencaplow@dwt.com	
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