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11 Attorneys for Defendants  
12 Washington Mutual, Kerry K. Killinger,  
13 and Joseph W. Saunders

14 IN THE UNITED STATES DISTRICT COURT  
15 THE NORTHERN DISTRICT OF CALIFORNIA  
16 SAN JOSE DIVISION

17 MICHAEL BLOMQUIST,

18 Plaintiff,

19 v.

20 WASHINGTON MUTUAL, a Washington  
21 corporation; KERRY K. KILLINGER; JOSEPH  
22 W. SAUNDERS; COUNTRYWIDE HOME  
23 LOANS, INC., a Delaware corporation;  
24 ANGELO MOZILLO; WACHOVIA  
25 CORPORATION, a North Carolina corporation;  
26 KEN THOMPSON; CITIGROUP, a Delaware  
27 corporation; SANFORD WEILL; CHARLES  
28 PRINCE; GOLDMAN SACHS GROUP INC., a  
Delaware corporation; HENRY PAULSON;  
BEAR STEARNS COMPANIES, INC., a  
Delaware corporation; JAMES CAYNE; THE  
MCGRAW HILL COMPANY, INC., a  
Delaware corporation; HAROLD MCGRAW III;  
WELLS FARGO & COMPANY, a Delaware  
corporation; PATRICIA R. CALLAHAN;  
HERBERT M. SANDLER; ROCK HOLDINGS,  
INC., a Delaware corporation; EXPERIAN  
CORPORATION, a Delaware corporation;  
MOODYS CORPORATION, a Delaware  
corporation; JAMES E. GILLERAN; JOHN M.  
REICH; JOHN D. HAWKE, JR.; JOHN C.  
DUGAN; SUSAN SCHMIDT BIES; DONALD  
E. POWELL; SHEILA C. BAIR

Defendants.

) Case No. 07-04108 JF/HRL

)  
) **DEFENDANTS WASHINGTON**  
) **MUTUAL, KERRY K. KILLINGER AND**  
) **JOSEPH W. SAUNDERS' NOTICE OF**  
) **MOTION AND MOTION TO DISMISS**  
) **PLAINTIFF'S FIRST AMENDED**  
) **COMPLAINT**

) Date: Friday, July 11, 2008

) Time: 9:00 a.m.

) Judge: Hon. Jeremy Fogel

) Department: SJ, Courtroom 3, 5th Floor

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**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on Friday, July 11, 2008, at 9:00 a.m., or as soon thereafter as the matter may be heard in Courtroom Three of the United States District Court for the Northern District of California, San Jose Division, located at 280 South First Street, Fifth Floor in San Jose, California, defendants Washington Mutual, Kerry K. Killinger, and Joseph W. Saunders (collectively “WAMU”) will and hereby do move this Court for an order dismissing plaintiff’s First Amended Complaint (“complaint”) pursuant to Federal Rules of Civil Procedure 8, 12(b)(1) and 12(b)(6).<sup>1</sup>

WAMU makes this motion on the grounds that each of plaintiff’s five purported causes of action (i.e., for (1) “false or deceptive statements that restrain trade and create unfair competition,” (2) “unsafe and unsound lending unlawful that restrains trade and creates unfair competition,” (3) “selling products below cost to restrain trade and create unfair competition,” (4) “fraud and conspiracy that restrains trade and creates unfair competition,” and (5) “fraudulent transaction of domestic securities in restraint of trade and unfair competition”) fails to state a claim on which relief can be granted, and that the Court lacks jurisdiction over plaintiff’s claims.<sup>2</sup> The Complaint also does not set forth a short and plain statement of plaintiff’s claim for relief.

WAMU also makes this motion on all applicable grounds stated in all other co-defendants’ motions to dismiss, and expressly incorporates their grounds by reference here.

WAMU asks the Court to dismiss the complaint and all its causes of action with prejudice because the nature of the complaint establishes that plaintiff has no viable claims against WAMU, and he has not suffered, nor can allege to have suffered, any harm from WAMU’s alleged conduct. Further, the extraordinarily broad and ambiguous nature of his allegations cannot support his fraud claims. Consequently, an amendment would not salvage plaintiff’s complaint.

This Motion rests on the concurrently filed Memorandum of Points and Authorities, and related pleadings and attachments in this action, the pleadings and records on file, such further papers as the parties may file in connection with this Motion, and such further argument and

<sup>1</sup> As required by this Court’s Standing Order, all parties have agreed on this hearing date.

<sup>2</sup> Although the complaint alleges six causes of action, its fifth cause of action for violation of the Administrative Procedures Act pertains only to the “Agencies.” Plaintiff, however, has not named any “Agencies” as defendants.

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1 evidence as the parties may present in connection with the hearing on this Motion. This Motion  
2 also rests on all pleadings and attachments and arguments presented by any co-defendants in  
3 connection with their motions to dismiss.

4 Respectfully submitted this 12th day of May, 2008.

5 DAVIS WRIGHT TREMAINE LLP

6 By /s/ Stephen M. Rummage

7 Stephen M. Rummage, *pro hac vice*  
8 Martin Fineman (Cal. Bar No. 104413)  
9 Sam N. Dawood (Cal. Bar No. 178862)

10 Attorneys for Defendants Washington Mutual,  
11 Kerry K. Killinger, and Joseph W. Saunders

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