**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF PENNSYLVANIA**

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| **EMANUEL SCHMALZ and GAIL WENTWORTH, Individually and on Behalf of All Others Similarly Situated,**<br><br>**Plaintiffs,**<br><br>**-against-**<br><br>**SOVEREIGN BANCORP, INC., JOSEPH P. CAMPANELLI, P. MICHAEL EHLERMAN, JOHN FRY, BRIAN HARD, MARIAN L. HEARD, GONZALO DE LAS HERAS, ANDREW C. HOVE, JR., WILLIAM J. MORAN, MARIA FIORINI RAMIREZ, JUAN RODRIGUEZ INCIARTE, DANIEL K. ROTHERMEL, JAY S. SIDHU, CAMERON C. TROILO, SR., RALPH V. WHITWORTH, FAY A. KNABB, RETIREMENT SAVINGS PLAN COMMITTEE OF SOVEREIGN BANCORP, INC., COMPENSATION COMMITTEE OF SOVEREIGN BANCORP, INC. and JOHN DOES 1-20,**<br><br>**Defendants.** | **Civil Action No.: 08-857 (RBS)**<br>**(Consolidated with: 08-01991)** |

# CONSOLIDATED AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

Plaintiffs Emanuel Schmalz and Gail Wentworth (collectively, the "Plaintiffs"), on behalf of the Sovereign Bancorp, Inc. Retirement Plan (the "Plan") and on behalf of a class of similarly situated participants and beneficiaries of the Plan, by their attorneys, allege the following:

## INTRODUCTION

1. This is a class action brought pursuant to §§ 502(a)(2) and (a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1132(a)(2) and (a)(3), against Plan fiduciaries, including Sovereign Bancorp, Inc. ("Sovereign" or the "Company"), for the violations of ERISA alleged herein.

2. Plaintiffs are former employees of Sovereign. Their claims arise from the failure of Defendants, as Plan fiduciaries, to act solely in the interests of the participants and beneficiaries of the Plan and to exercise the required skill, care, prudence and diligence in administering and managing the Plan and its assets during the period January 1, 2002 through the present the ("Class Period").

3. Sovereign's equity, offered through the Sovereign Common Stock Fund, was one of the principal investments of the Plan throughout the Class Period. Plaintiffs allege in Count I that Defendants, responsible for the investment of the Plan's assets, breached their fiduciary duties by failing to prudently and loyally manage the Plan's investment in Sovereign, and continued to offer its stock as an investment option for the Plan when it was no longer prudent to do so. In Count II, Plaintiffs allege that Defendants, who communicated with participants regarding the Plan's assets, or had a duty to do so, failed to provide participants with complete and accurate information regarding Sovereign stock sufficient to advise participants of the true risks of investing their retirement savings in Sovereign. In Count III, Plaintiffs allege that Defendants, responsible for the selection, removal, and, thus, monitoring of the Plan's fiduciaries, failed to properly monitor the performance of their fiduciary appointees, and remove and replace those whose performance was inadequate. In Count IV, Plaintiffs allege that the Defendants

named therein breached their fiduciary duty of loyalty by engaging in a prohibited transaction, in violation of ERISA. In Count V, Plaintiffs allege that the Defendants named therein breached their fiduciary duty of loyalty by acting in furtherance of their personal interests as employees or executives of Sovereign at the expense of the best interests of the Plan, its participants and beneficiaries. Finally, in Count VI, Plaintiffs allege that Defendants breached their duties and responsibilities as co-fiduciaries by failing to prevent breaches by other fiduciaries of their duties of prudent and loyal management, complete and accurate communications, and adequate monitoring of the Plan and its assets.

4. As more fully set forth below, during the Class Period, Defendants imprudently permitted the Plan to hold and acquire millions of dollars in Sovereign stock. They did so despite the fact that Defendants knew or should have known that Sovereign was engaging in highly risky and improper activities that artificially inflated the value of its stock and otherwise rendered its stock an unsuitable investment for participants' retirement savings. As a result of Defendants' breaches alleged herein, the Plan and its participants and beneficiaries suffered substantial losses.

5. This action is brought on behalf of the Plan and seeks to recover losses to the Plan for which Defendants are personally liable pursuant to ERISA §§ 409 and 502(a)(2), 29 U.S.C. §§ 1109, and 1132(a)(2). In addition, under § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3)), Plaintiffs seek other equitable relief from Defendants, including, without limitation, injunctive relief and, as available under applicable law, constructive trust, restitution, and other monetary relief.

6. Because Plaintiffs' claims apply to the participants and beneficiaries of the Plan as a whole, and because ERISA authorizes participants such as Plaintiffs to sue for breaches of

fiduciary duty on behalf of the Plan, Plaintiffs bring this class action on behalf of the Plan and all Plan participants and beneficiaries during the Class Period.

## JURISDICTION AND VENUE

7. ***Subject Matter Jurisdiction.*** This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

8. ***Personal Jurisdiction.*** ERISA provides for nation-wide service of process. ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). As all Defendants are either residents of the United States or subject to service in the United States, this Court has personal jurisdiction over them.

9. ***Venue.*** Venue is proper in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan is administered in this district, some or all of the fiduciary breaches for which relief is sought occurred in this district, and/or some Defendants reside and/or transact business in this district.

## PARTIES

### A. Plaintiffs

10. Plaintiff Emanuel Schmalz is a "participant" of the Plan, within the meaning of ERISA §§ 3(7) and 502(a), 29 U.S.C. §§ 1002(7) and 1132(a), and held Sovereign stock in his retirement investment portfolio during the Class Period.

11. Plaintiff Gail Wentworth is a "participant" of the Plan, within the meaning of ERISA §§ 3(7) and 502(a), 29 U.S.C. §§ 1002(7) and 1132(a), and held Sovereign stock in her retirement investment portfolio during the Class Period.

## B. Defendants

***Sovereign Defendants***

12. Defendant Sovereign is a Pennsylvania corporation, headquartered at 1500 Market Street, Philadelphia, PA. Sovereign is the holding company for Sovereign Bank that provides commercial banking services in the United States. During the Class Period, Sovereign common stock traded on the New York Stock Exchange.

13. Sovereign is the Plan Sponsor. *See* Form 11-K filed by Sovereign on June 26, 2008, with the United States Securities and Exchange Commission ("SEC") for the year ended December 31, 2007 (the "2007 Form 11-K") at 4.

14. Sovereign, upon information and belief, exercises discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets. Sovereign, at all times, acted through its officers, directors and employees, including members of its Board of Directors' Retirement Savings Plan Committee ("Retirement Committee"), who were appointed by the Company to perform Plan-related fiduciary functions, and did so in the course and scope of their services for the Company.

15. Sovereign had, upon information and belief, at all applicable times, effective control over the activities of its officers, directors and employees, including their Plan-related activities. Through its Board of Directors ("Board"), or otherwise, Sovereign had the authority and discretion to hire and terminate said officers and employees. Sovereign also had the authority and discretion to appoint, monitor and remove officers and employees from their individual fiduciary roles with respect to the Plan. Accordingly, the actions of the Board, the Retirement Committee and/or any other employee fiduciaries, are imputed to Sovereign under the doctrine of *respondeat superior*, and Sovereign is liable for those actions.

16. Defendant Fay A. Knabb ("Knabb"), an employee of Sovereign, has served during the Class Period as the Plan Administrator. During the Class Period, Defendant Knabb was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that she exercised discretionary authority with respect to the management and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets.

***Director Defendants***

17. Defendant Joseph P. Campanelli ("Campanelli") was appointed President and interim Chief Executive Officer ("CEO") of Sovereign, effective October 10, 2006. Subsequently, on January 16, 2007, Defendant Campanelli was appointed as the permanent CEO and a director of Sovereign. During the Class Period, Defendant Campanelli was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that he exercised discretionary authority with respect to the management and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets.

18. Defendant P. Michael Ehlerman ("Ehlerman") has served as a director of Sovereign since September 2002. Between October 2006 and January 2007, Defendant Ehlerman served as the Co-Lead Director of the Board. In January 2007, Defendant Ehlerman was elected Chairman of the Board. Additionally, Defendant Ehlerman served as the Chairman of the Board's Compensation Committee ("Compensation Committee"). Further, Defendant Ehlerman chaired the Retirement Committee from 2002 through 2005. During the Class Period, Defendant Ehlerman was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that he exercised discretionary authority with respect to the management and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets.

19. Defendant John Fry ("Fry") served as a director of Sovereign from January 2001 until his resignation from the Board on September 17, 2002. Additionally Defendant Fry served on the Compensation Committee. Further Defendant Fry chaired the Retirement Committee from April 2002 to September 2002. During the Class Period, Defendant Fry was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that he exercised discretionary authority with respect to the management and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets

20. Defendant Brian Hard ("Hard") has served as a director of Sovereign since November 1999. Defendant Hard also serves on the Compensation Committee. Additionally, Defendant Hard served on the Retirement Committee. During the Class Period, Defendant Hard was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that he exercised discretionary authority with respect to the management and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets.

21. Defendant Marian L. Heard ("Heard") has served as a director of Sovereign since April 2005. Additionally, Defendant Heard is the current Chair of the Compensation Committee. Further, Defendant Heard serves on the Retirement Committee. During the Class Period, Defendant Heard was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that she exercised discretionary authority with respect to the management and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets.

22. Defendant Gonzalo de Las Heras ("Heras") has served as a director of Sovereign since October 2006. Additionally, Defendant Heras serves on the Compensation and Retirement Committees. During the Class Period, Defendant Heras was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that he exercised discretionary authority with respect to the management

and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets.

23. Defendant Andrew C. Hove, Jr. ("Hove") has served as a director of Sovereign since February 2002. Additionally, Defendant Hove serves on the Compensation Committee. During the Class Period, Defendant Hove was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that he exercised discretionary authority with respect to the management and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets.

24. Defendant William J. Moran ("Moran") has served as a director of Sovereign since September 2006. Additionally, Defendant Moran serves on the Compensation Committee. During the Class Period, Defendant Moran was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that he exercised discretionary authority with respect to the management and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets.

25. Defendant Maria Fiorini Ramirez ("Ramirez") has served as a director of Sovereign since June 2006. Additionally, Defendant Ramirez serves on the Compensation Committee. Defendant Ramirez is the current Chair of the Retirement Committee. During the Class Period, Defendant Ramirez was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that she exercised discretionary authority with respect to the management and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets.

26. Defendant Juan Rodriguez-Inciarte ("Rodriguez") has served as a director of Sovereign since May 2006. Further, Defendant Rodriguez served as a Co-Lead Director between October 2006 and January 2007. Additionally, Defendant Rodriguez serves as an alternate on the

Compensation and Retirement Committees in the absence of Defendant Heras. Defendant Rodriguez is also the Executive Vice President of Banco Santander Central Hispano, S.A. ("Santander"), a major shareholder of the Company. During the Class Period, Defendant Rodriguez was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that he exercised discretionary authority with respect to the management and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets.

27. Defendant Daniel K. Rothermel ("Rothermel") served as a director of Sovereign since the Company was formed in 1987 until his retirement in May 2007. Additionally, Defendant Rothermel served on the Retirement Committee. During the Class Period, Defendant Rothermel was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that he exercised discretionary authority with respect to the management and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets.

28. Defendant Jay S. Sidhu ("Sidhu") served as a director of Sovereign since 1988. In November 1989, Defendant Sidhu was appointed President and CEO of Sovereign, and subsequently, in April 2002, he was appointed Chairman of the Board. Additionally, Defendant Sidhu served on the Retirement Committee. Defendant Sidhu resigned as President and CEO of Sovereign, effective October 10, 2006, and as a director and the Chairman of the Board, effective December 31, 2006. During the Class Period, Defendant Sidhu was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that he exercised discretionary authority with respect to the management and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets.

29. Defendant Cameron C. Troilo, Sr. ("Troilo") has served as a director of Sovereign since 1997. Additionally, Defendant Troilo serves on the Retirement Committee, which he

chaired in 2005 and 2006. During the Class Period, Defendant Troilo was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that he exercised discretionary authority with respect to the management and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets.

30. Defendant Ralph V. Whitworth ("Whitworth") has served as a director of Sovereign since March 2006. Additionally, Defendant Whitworth serves on the Compensation Committee. During the Class Period, Defendant Whitworth was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that he exercised discretionary authority with respect to the management and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets.

31. Defendants Campanelli, Ehlerman, Fry, Hard, Heard, Heras, Hove, Ramirez, Rodriguez, Rothermel, Sidhu, Troilo, and Whitworth are hereinafter collectively referred to as the "Director Defendants."

32. Because of the Director Defendants' position, they knew the adverse non-public information about the business of Sovereign, as well as its finances, markets and present and future business prospects, *via* access to internal corporate documents, communications, and connections with other corporate officers and employees, attendance at Board meetings and committees thereof, and *via* reports and other information provided to them in connection therewith.

33. During the Class Period, the Director Defendants participated in the issuance of false and/or misleading statements, including the preparation of the false and/or misleading press releases and SEC filings.

34. Upon information and belief, the Director Defendants were fiduciaries of the Plan within the meaning of ERISA in that they exercised discretionary authority with respect to: (i) the management and administration of the Plan; (ii) the management and disposition of the Plan's assets; and/or (iii) appointing, monitoring, and removing the Plan's fiduciaries.

***Committee Defendants***

35. Defendant Compensation Committee, appointed by the Board, acted through its members, including Defendants Ehlerman, Fry, Hard, Heard, Heras, Hove, Moran, Ramirez, Rodriguez and Whitworth, in administering the Company's equity compensation programs, including the Plan, at all relevant times. During the Class Period, Defendant Compensation Committee was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that it exercised discretionary authority with respect to the management and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets.

36. Defendant Retirement Committee, appointed by the Board, acted through its members, including Defendants Ehlerman, Fry, Hard, Heard, Heras, Ramirez, Rodriguez, Rothermel, Sidhu and Troilo, in monitoring the administration and management of the Plan, at all relevant times. As part of its duties, the Retirement Committee approved the Plan's investment policies and guidelines; reviewed the performance of the Plan's investments; and appointed and retained trustees and investment managers for the Plan. During the Class Period, Defendant Retirement Committee was a Plan fiduciary within the meaning of ERISA § 2(21)(A), in that it exercised discretionary authority with respect to the management and administration of the Plan and/or authority or control over the management and disposition of the Plan's assets.

***Additional "John Doe" Defendants***

37. Without limitation, unknown "John Doe" Defendants 1-20 include any other individual(s) who are or were fiduciaries of the Plan within the meaning of ERISA § 3(21)(A) during the Class Period. The identities of the John Doe Defendants are currently unknown to Plaintiffs; once their identities are ascertained, Plaintiffs will seek leave to join them to the instant action under their true names.

## THE PLAN

38. The Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A). While the Plan is not a party to this action, pursuant to ERISA, the relief requested by Plaintiffs is for the benefit of the Plan. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2).

39. The Plan covers eligible employees of Sovereign and its subsidiaries. *See* 2007 Form 11-K at 4. The Company describes the Plan as designed to help participants build income for retirement "through contributions to the Plan made by [participants] and by Sovereign." *See* Sovereign Bancorp, Inc. Retirement Plan Summary Plan Description, effective November 1, 2004 (the "Sovereign SPD") at 4. A true and correct copy of the Sovereign SPD is attached hereto and incorporated herein as Exhibit "A".

40. Pursuant to the Sovereign SPD,

> The Plan is a combination of two plans, a "401(k) plan" and an employee stock ownership plan or "ESOP." The Sovereign Bancorp, Inc. Employee Stock Ownership Plan merged with and into the Sovereign Bancorp, Inc. 401(k) Retirement Plan effective November 1, 2004 to form the Sovereign Bancorp, Inc. Retirement Plan. A 401(k) plan is a defined contribution plan designed to permit [participants] to save for [their] retirement on a tax deferred basis by entering into a salary reduction agreement with Sovereign. …An "ESOP" is a plan designed to invest primarily in employer stock. … *Id*. at 4.

41. The 401(k) portion of the Plan is available to qualified employees once they have completed six months of service with the Company.[1] *See* 2007 Form 11-K at 4. Participation in the Employee Stock Ownership Plan ("ESOP") portion of the Plan requires 1,000 hours of service in a twelve consecutive month period. *See id*.

42. Prior to May 2007, the ESOP portion of the plan included a leverage component originally used to borrow $440,000,000 from Sovereign to purchase 6.4 million shares of Sovereign stock. *See* 2007 Form 11-K at 4. As of December 31, 2006, the Plan had an outstanding loan to Sovereign of $25,996,947 (fair value of $26,243,300). *See id*. This loan was collateralized by the unallocated assets of the ESOP, which totaled $70,125,709 as of December 31, 2006. *See id*. According to the 2007 Form 11-K, the average interest rate on the loan for the period January 1, 2007 through May 3, 2007 and the year ended December 31, 2006 was 10%. *See id*.

43. While the 401(k) portion of the Plan is currently active, Sovereign's 2007 Form 11-K further provides that in the first quarter of 2007, Sovereign's Board (through its Retirement Committee) decided to freeze the ESOP portion of the Plan effective March 2007. *See id*. at 4. All participants who were actively employed by Sovereign on May 3, 2007 became 100 percent vested in their ESOP account balances. *See id*. At that time, the Plan's participants were allowed to reallocate a portion of their interests in the ESOP to any other investment option available under the Plan. At December 31, 2007, the ESOP held assets totaling $55,313,176, which included $45,791,223 of Sovereign stock. *See id*. Of the total amount, participants can allocate $29,842,237 to other investment options. *See id*. As per the Internal Revenue Service ("IRS") diversification rules, the investment restriction on the remaining $52,470,939 will be

[1] Effective January 31, 2008, Sovereign employees are eligible to participate in the 401(k) portion of the Plan following 30 days of employment.

lifted on March 31, 2009 for all participants who have completed three years of ESOP vesting service by December 31, 2008. *See id*.

44. The Plan allows participants to build income from two sources: 1) pre-tax deferrals (the amount participants contribute to the Plan on a pre-tax basis); and 2) matching contributions that may be made by the Company. *See* Sovereign SPD at 2. More specifically, each Plan participant is eligible to contribute up to 100% of his or her annual compensation to the Plan on a pre-tax basis through payroll deductions. *See* 2007 Form 11-K at 5. Further, Plan participants who have attained the age of 50 are eligible for catch-up contributions. *See id*. Additionally, Plan participants can rollover distributions from other qualified defined benefit or defined contribution plans. *See id*.

45. Under the terms of the Plan, Company matching contributions are automatically invested in the Sovereign Common Stock Fund. *See* 2007 Form 11-K at 5. Sovereign matches 100% of the first 3% of eligible compensation contributed to the Plan, plus 50% of the next 2% of compensation that the participant contributes. *See id*.

46. Participants are always 100 percent vested in their 401(k) Plan account balances. *See* 2007 Form 11-K at 5. Vesting in the ESOP portion of the plan was based on the Plan participants' years of employment with the Company. Prior to May 3, 2007, a participant was 100% vested in his or her ESOP Plan account after completing five years of service. *See id*. at 6.

47. The assets of an employee benefit plan, such as the Plan must be held "in trust by one or more trustees." ERISA § 403(a). During the Class Period, The Charles Schwab Trust Company (the Trustee), held the Plan's assets in a trust fund established under the Plan. *See* 2007 Form 11-K at 10.

48. Sovereign common stock represented a major portion of the total invested assets of the Plan throughout the Class Period. For instance, as of December 31, 2007 and 2006, the Plan held Sovereign stock with a fair market value of approximately $110,920,152 and $277,489,988, respectively. *See* 2007 Form 11-K at 2. These immense holdings represented approximately of 26.5% and 55.2% of the total invested assets of the Plan for 2007 and 2006 Plan years, respectively.

## DEFENDANTS' FIDUCIARY STATUS

### A. Nature of Fiduciary Status

49. ***Named Fiduciaries***. ERISA requires every plan to provide for one or more named fiduciaries who will have "authority to control and manage the operation and administration of the plan." ERISA § 402(a)(1), 29 U.S.C. § 1002(21)(A). Here, the Plan's documents specifically name the Company, the Board, and the Retirement Committee as "named fiduciaries" for purposes of this provision. *See* Sovereign Bancorp, Inc. Retirement Plan, as amended and restated effective November 1, 2004 (the "Sovereign Plan Document"), Art. X, § 10.1; Art. I § 1.2. A true and correct copy of the Sovereign Plan document is attached hereto and incorporated herein as Exhibit "B".

50. ***De Facto Fiduciaries***. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under ERISA § 402(a)(1), but also any other persons who in fact perform fiduciary functions. Thus, a person is a fiduciary to the extent he or she "exercises any discretionary authority or control respecting management of such plan or exercises any authority or control respecting management of disposition of its assets; …or has any discretionary authority or discretionary responsibility in the administration of such plan." ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i).

51. Each Defendant was a fiduciary with respect to the Plan and owed fiduciary duties to the Plan, its participants and beneficiaries under ERISA in the manner and to the extent set forth in the Plan's documents, through the individual Defendant's conduct, and under ERISA.

52. As fiduciaries, Defendants were required by ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1) to manage and administer the Plan and its investments solely in the interest of the Plan's participants and beneficiaries. As fiduciaries, Defendants were required to act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

53. Plaintiffs do not allege that each Defendant was a fiduciary with respect to all aspects of the Plan's management and administration. Rather, as set forth below, Defendants were fiduciaries to the extent of the specific fiduciary discretion and authority assigned to or exercised by each of them. As further set forth below, the claims against each Defendant are based on such specific discretion and authority.

54. ERISA permits the fiduciary functions to be delegated to insiders without an automatic violation of the rules against prohibited transactions, ERISA § 408(c)(3), 29 U.S.C. § 1108(c)(3), but insider fiduciaries must still act solely in the interests of participants and beneficiaries, not in the interests of the sponsor. Moreover, all Plan fiduciaries were obliged, when wearing their fiduciary hat(s) to act independently of Sovereign, which had no authority to direct the conduct of any of them with respect to the Plan, its investments, or the disclosure of information between and among fiduciaries or from fiduciaries to the Plan's participants and beneficiaries.

### B. Defendants' Fiduciary Roles

55. As Plan Administrator, Defendant Knabb was charged with general Plan administration, which, *inter alia*, included communications with Plan's participants and beneficiaries regarding the Plan, and providing participants and beneficiaries with information and materials required by ERISA. Thus, Defendant Knabb was a Plan fiduciary during the Class Period, within the meaning of ERISA, in that she exercised discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets.

56. Sovereign is both the Plan Sponsor and Administrator. Pursuant to the Sovereign Plan Document:

> Duties and Responsibilities of Fiduciaries; Allocation of Responsibility among Fiduciaries for Plan and Trust Administration. A Fiduciary shall have only those specific powers, duties, responsibilities and obligations as are specifically given him under this Plan or the Trust. In general, the Company, by action of its Board of Directors, shall have the sole responsibility for making the contributions provided for under this Plan, and shall have the sole authority to appoint and remove the Trustees, and to amend or terminate, in whole or in part, this Plan or the Trust. The Company shall have the sole responsibility for the administration of this Plan and the Trust, and the Company may appoint an Administrative Committee to discharge its duties as Plan administrator. The Company shall also have the right to designate investment policies under which the Trustee shall act. …
> Art. X, § 10.1.

Accordingly, under the terms of the Plan, Sovereign, its Board and the Retirement Committee[2], were explicitly entrusted with the administration of the Plan, and were therefore Plan fiduciaries during the Class Period under ERISA § 3(21)(A)(i).

[2] Pursuant to the Sovereign Plan Document, the "Administrative Committee" referenced in Art. X, § 1.2, is defined as "the Retirement Savings Plan Committee of the Board of Directors of the Company through which the Company shall discharge its duties as Plan administrator." Art. 1, § 1.2.

57. Further, pursuant to the trust agreement governing the Plan, the Company and/or its delegees, were entrusted with the management, disposition and investment of the Plan assets:

> Article I
> Trust Fund
>
> 1.1 The Company's Vice President or other duly authorized official shall certify in writing to the Trustee the names and specimen signatures of all those persons who are authorized to act as or on behalf of the Plan's named fiduciary, which term shall include the administrator of the Plan (the "Administrator") and these names and specimen signatures shall be updated as necessary by the Vice President or other duly authorized official.
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> * * *
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> Article II
> Investments and Distributions
>
> 2.1 (a) Except as provided below, the Administrator shall have all power over and responsibility for the management, disposition, and investment of the Trust assets, and the Trustee shall comply with proper written directions of the Administrator concerning those assets. The Administrator shall not issue directions in violation of the terms of the Plan and Trust or prohibited by the fiduciary responsibility rules of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Except to the extent required by ERISA or otherwise provided in this Agreement, the Trustee shall have no duty or responsibility to review, initiate action, or make recommendations regarding Trust assets and shall retain assets until directed in writing by the Administrator to dispose of them.
>
> The Administrator may delegate to any other person or persons any of the Administrator's rights, powers or responsibilities with respect to the operation and administration of the Trust Fund. Any such delegation shall by made in writing and communicated to the Trustee. …
>
> (c) The Administrator may appoint an investment manager or managers within the meaning of section 3(38) of ERISA to direct, control or manage the investment of all or a portion of the Trust assets, as provided in sections 3(38) and 403(a)(2) of ERISA. The Administrator shall notify the Trustee in writing of the appointment of each investment manager, and the assets over which each manager shall exercise control and cause

> the investment manager to acknowledge to the Company in writing that the investment manager is a fiduciary with respect to the Plan. If the foregoing conditions are met, the investment manager shall have the power to manage, acquire, or dispose of any Trust assets identified as under such manager's control…

Trust Agreement, dated October 6, 2005 between Sovereign and The Charles Schwab Trust Company (the "Trust Agreement"). A true and correct copy of the Trust Agreement is attached hereto and incorporated herein as Exhibit "C".

58. Fiduciary responsibilities were likewise conferred upon the Compensation Committee and its members. According to Sovereign's Schedule 14A, filed with the SEC on April 3, 2007, the Compensation Committee was charged with, *inter alia*, "administer[ing] [Sovereign's] equity compensation and other incentive compensation plans" as well as "mak[ing] recommendations to the board regarding equity-based and incentive compensation plans." The Compensation Committee and its members, were fiduciaries of the Plan during the Class Period, within the meaning of ERISA, in that they exercised discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets.

59. The Plan and its assets were consequently operated during the Class Period by the Compensation and Retirement Committees (the "Plan Committees"), selected and monitored by the Board. The Plan Committees exercised broad responsibility for management and administration of the Plan and, among their other duties, were responsible for oversight of the Plan's investment options, policies, and the performance of its investments, as well as review of the Plan's investment managers.

60. In their capacity to select and monitor investment options for the Plan, the Plan Committees had the discretion and authority to suspend, eliminate, or reduce any Plan investment,

including investments in Sovereign stock. Upon information and belief, the Plan Committees regularly exercised their authority to suspend, eliminate, reduce, or restructure Plan investments, as, for instance, suspending the ESOP portion of the Plan in the first quarter of 2007. The Plan Committees also reported to the Board regarding these duties and responsibilities, and Plan events pertaining to the same.

61. Upon information and belief, the Plan Committees exercised responsibility for communicating with participants regarding the Plan, and providing participants with information and materials required by ERISA. In this regard, on behalf of Sovereign and the Director Defendants, the Plan Committees disseminated Plan documents and materials.

62. The Director Defendants are Plan fiduciaries to the extent they exercised their authority to select, monitor, retain, and remove the members of the Plan Committees and, accordingly, exercised authority and oversight over the Plan Committees, which reported to the Board regarding the Plan Committees' fiduciary duties and responsibilities to the Plan and with respect to their actions pertaining to the same.

63. Sovereign is a Plan fiduciary not only as the Plan Sponsor and Administrator, but also to the extent that the actions of its officers, directors and employees, including the Plan Committees, are properly imputed and attributed to the Company. Therefore, the participation in and knowledge of Sovereign's inappropriate and potentially unlawful practices by Defendants, as alleged herein, is imputed and attributed to Sovereign, the Plan Committees, and the Director Defendants.

## **DEFENDANTS' FIDUCIARY DUTIES UNDER ERISA**

64. ERISA is a comprehensive statute covering virtually all aspects of an employee benefit plan, including retirement savings plans, such as the Plan. The goal of ERISA is to protect the interests of a plan's participants and their beneficiaries.

> It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit Plan and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit Plan, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

ERISA § 2(b).

65. Under ERISA, those responsible for employee benefit plan management stand in a fiduciary relationship to a plan's participants. Pursuant to ERISA, a "fiduciary" is defined broadly to include all persons or entities that are able to exercise discretionary authority over the management of a plan or the payment of benefits. ERISA § 3(21).

66. ERISA imposes on each Defendant the requirement to "discharge his [or her] duties with respect to a plan. . . with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." ERISA § 404(a)(1)(B).

67. ERISA also imposes on Defendants a duty of loyalty, requiring each of them to "discharge his [or her] duties with respect to a plan solely in the interest of the participants and their beneficiaries and . . . for the exclusive purpose of . . . providing benefits to the participants and their beneficiaries." ERISA § 404(a)(1)(A)(i).

68. Other duties imposed upon Defendants who are fiduciaries under ERISA by virtue of their exercise of authority or control respecting the management of the Plan or disposition of its assets, include but are not limited to:

a) The duty to investigate and evaluate the merits of decisions affecting the use and disposition of Plan's assets;

b) The duty to conduct an independent and thorough investigation into, and to continually monitor, the merits of all the investment alternatives of the Plan, including the Sovereign Common Stock Fund, to ensure that each investment was a suitable option for the Plan;

c) The duty to evaluate all investment decisions, including investment in Sovereign stock, with "an eye single" to the interests of the Plan's participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the Plan's sponsor, Sovereign, to avoid conflicts of interest and to resolve them promptly when they occur;

d) The duty to avoid placing themselves in a position where their acts as officers, directors, or employees of the Company will prevent their functioning with the complete loyalty to participants demanded of them as fiduciaries and, if they find themselves in such a position, to seek independent, unconflicted advice;

e) The duty under appropriate circumstances, to monitor or influence the management of the companies, including Sovereign, in which the Plan owns stock;

f) To the extent that a party is responsible for appointing and removing fiduciaries, the duty to monitor those persons who have been named fiduciaries;

g) The duty to disclose and inform of any material adverse information about the Company, which duty entails, among other things: (1) a duty not to make materially false and misleading statements or misinform the participants; (2) an affirmative duty to inform the Plan participants about material adverse factors which were affecting the Company any time the fiduciary knew or should have known, pursuant to his or her duty to investigate, that failing to make such a disclosure might be harmful; (3) a duty to convey complete and accurate information material to the circumstances of the participants and their beneficiaries; and (4) a duty to diversify the Plan's investments to minimize the risk of large loss to the Plan, its participants and beneficiaries; and

h) When as here, a plan is composed of various investment funds, the duty to inform and disclose also includes the duty to impart to participants material information which the fiduciary knows or should know is sufficient to appraise the average participant of the comparative risks associated with investing in any particular investment.

69. Insofar as the Plan was not properly diversified and therefore more risky to its participants and beneficiaries, Defendants had heightened fiduciary duties with respect to the Plan's investment in Sovereign stock, including heightened duties to disclose all material information relevant to investments in Sovereign stock.

70. ERISA permits the fiduciary function to be shared among various individuals and entities. Given ERISA's functional conception of a fiduciary, absent formal discovery, it is impossible to know which fiduciaries exercised which fiduciary functions.

## CLASS ACTION ALLEGATIONS

71. Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and the following class of persons similarly situated (the "Class"):

> All persons who were participants in or beneficiaries of the Plan at any time during the Class Period, *i.e*., between January 1, 2002 and the present, and whose Plan accounts included investments in Sovereign stock.

72. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe there are, at a minimum, tens of thousands of Class members who participated in, or were beneficiaries of, the Plan during the Class Period.[3]

73. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are whether:

(a) Defendants owed a fiduciary duty to the Plan, Plaintiffs and other Class members;

(b) Defendants breached their fiduciary duties to the Plan, Plaintiffs and other Class members by failing to act prudently and solely in the interests of the Plan and its participants and beneficiaries;

(c) Defendants violated ERISA; and

(d) the Plan, Plaintiffs and other Class members have sustained losses and, if so, what is the proper measure of those losses.

74. Plaintiffs' claims are typical of the claims of the Class because the Plan, Plaintiffs and the other Class members each sustained losses arising out of Defendants' wrongful conduct in violation of federal law as complained of herein.

75. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel competent and experienced in class action litigation, particularly that involving claims arising under ERISA. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

76. Class action status in this ERISA action is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of (i) individual adjudications dispositive of the interests of the absentee Class members; and/or (ii) establishing incompatible standards of conduct for Defendants. Furthermore, Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole, and rendering a class action a superior method of fair and efficient adjudication of this controversy.

## FACTS BEARING ON DEFENDANTS' FIDUCIARY BREACHES

### A. Sovereign's Pervasive And Improper Business Practices Rendered Its Stock An Imprudent Plan Investment

77. Sovereign, formed in 1984, primarily engages in the generation of deposits and origination of loan products through its network of community banking offices located in eastern Pennsylvania, New Jersey, New York, New Hampshire, Massachusetts, Connecticut, Rhode

[3] According to the Plan's Form 5500 filed with the IRS and Department of Labor ("DOL") for the year ending

Island, and Maryland. According to the Company's Form 10-K for the year ended December 31, 2006, Sovereign "is a $90 billion financial institution…with nearly 800 community banking offices, over 2,000 ATMs and about 12,500 team members with principal markets in the Northeastern United States."

78. Sovereign's deposit products include demand accounts, customer repurchase agreements, savings accounts, retirement savings plans, money market accounts, and certificates of deposits. The Company's loan products comprise small business and middle market commercial loans, multi-family loans, residential mortgage loans, home equity lines of credit, and other consumer loans. Sovereign also originates auto loans in the Southeastern and Southwestern parts of the United States. Additionally, Sovereign provides cash management and capital markets services, as well as asset-backed lending products, commercial real estate loans, automobile dealer floor plan loans, and leases to commercial customers.

79. Throughout the Class Period, to maintain the Company's image as a steady earnings performer, and experiencing strong financial growth, Sovereign persistently under-reported the degree of risk posed to its operations by the Company's ill-considered acquisitions and heavy exposure to the leveraged finance origination market in its communications to the investing public, including the Plan participants.

80. Pursuant to the Plan documents, Sovereign's filings with the SEC are incorporated into the Plan's communications with its participants. Specifically, the Sovereign SPD provides in relevant part that:

> The following documents filed by Sovereign or the Plan with the SEC are incorporated by reference into this prospectus:
>
> - Sovereign's Annual Report on Form 10-K for the most recent fiscal year;

December 31, 2006, there were 12,836 participants in the Plan at the end of the 2006 Plan year.

- the Plan's Annual Report on Form 11-K for the most recent fiscal year;

- Sovereign's Quarterly Reports on Form 10-Q for the current year's fiscal quarters;

- the description of the Sovereign common stock contained in Sovereign's Registration Statement on Form 8-A/A (Amendment No. 2) filed with the SEC on October 28, 2005, pursuant to the Securities Exchange Act of 1934, as amended, and any restatements or reports filed for the purpose of updating such registration statement; and

- to the extent designated thereon, certain of Sovereign's Current Reports on Form 8-K and all documents filed after the date of this prospectus by Sovereign pursuant to Section 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act of 1934, as amended.

*Id*. at 3.

81. At all relevant times, Sovereign engaged in speculative and risky business practices to create the impression that it was a dynamic and growing company. In actuality, the Company, led by a conflicted Board, entered into a merger transaction that proved to be disastrous for the Company and its stock price. Further, Sovereign was extending credit using lax or virtually no underwriting standards, and selling such loans in securitization transactions with knowledge or reckless disregard of the consequences its actions would have on its future financial condition. This was not disclosed, however, in Sovereign's annual, quarterly, or periodic filings with the SEC.

82. Moreover, Sovereign did not report accurately on its books the true value of its assets and liabilities and delayed writing down the value of its assets. By continuing to cause the Plan to invest in the Company stock while Sovereign was involved in such practices, Defendants caused serious losses to the Plan, which had invested heavily in Sovereign stock as a long term investment and purchased shares during the Class Period at inflated prices.

### (1) Sovereign Enters Into A Merger Transaction Despite Conflicts Of Interests Resulting In Significant Good-Will Impairment Charges

83. During the Class Period, Defendants knew or should have known that the Company entered in an unsound merger transaction (described below), that was widely critiqued by both Sovereign shareholders and financial analysts. Yet, Defendants allowed the Company to complete the controversial transaction and failed to communicate to the Plan participants the true risks that the transaction posed to the value of the Company stock, thereby disabling the Plan participants from making fully informed decisions about investing in Sovereign stock.

84. On October 24, 2005, Sovereign announced in its Form 8-K filing with the SEC, that it entered in an investment agreement with Santander, pursuant to which, *inter alia*, Santander was to purchase from Sovereign 19.8% of Sovereign's common stock for $2.4 billion in cash. This deal, that made Santander the Company's biggest shareholder, was undertaken to finance the simultaneously announced acquisition of Independence Community Bank Corp. ("Independence").

85. Under the terms of the merger agreement between Sovereign and Independence (the "Acquisition"), Sovereign was to acquire 100% of Independence for $42 per share in cash, representing an aggregate transaction value of $3.6 billion. The price represented about 15.6 times 2006 analyst mean earnings estimates and 1.58 times Independence's book value.

86. The announcement of the Acquisition triggered a wide-ranging protest by the Company's institutional shareholders, led by the Relational Investors LLC, an asset management firm, that contended at the time, that Sovereign's stock was underperforming, and that Sovereign's then President and CEO, Defendant Sidhu, and its Board, were responsible for the said underperformance of Company stock.

87. The concern of Sovereign's institutional investors that the Acquisition was overpriced and would be dilutive to the Company's shareholders, quickly spread among financial analysts as well. For example, Collyn Bement Gilbert, an analyst at Ryan Beck & Co. in Florham Park, N.J., told *The Associated Press*, "Sovereign decided to take this infusion of capital and make this very large acquisition, far larger than what they've done historically and out of the path of what they normally acquire. This transaction is a clear diversion from what they've historically set."

88. On November 2, 2005, Relational Investors issued the following press release, also filed as part of Sovereign's Definitive Proxy materials with the SEC:

> SAN DIEGO, CA, November 2, 2005 — During a presentation today at an investor's conference sponsored by Ryan Beck & Co., Inc., Jay S. Sidhu, Chairman and CEO of Sovereign Bancorp, Inc. (NYSE: SOV) made the following statement in response to a question about whether Sovereign would consider an alternate bid:
>
> > "…the question was, if somebody came up with a very high price for Sovereign, and wouldn't we look at that. No question about it, if somebody came up with a very high price which was covered, I mean this deal can be, there are consequences, it's like $100 million break up fee here and $100 million break up fee there and those kind of things you know and if all those deals all those things and all those issues showed that it was a better transaction for us that was put on the table, we would definitely look at it." (emphasis added)
>
> This statement appears to directly and unequivocally contradict the plain language on page 1 of Sovereign's form 8-K filed with the Securities and Exchange Commission on October 27, 2005, purporting to provide a summary of Sovereign's recent agreement with Santander.
>
> In relevant part, the filing states "…beginning on October 24, 2005, and ending at the Closing under the Investment Agreement…Sovereign cannot solicit, respond to or accept a third party proposal to acquire Sovereign…"

> Mr. Sidhu's statements are extremely confusing and misleading. If Sovereign's agreement with Santander has been modified, or if there is another explanation for the seeming contradiction, we request that the Company make a prompt and thorough disclosure clarifying Mr. Sidhu's comments.

89. On the same day, *The Wall Street Journal* ("*WSJ*") published an article entitled "Sovereign Bancorp's Takeover Deal Looks Like a Dis to Shareholders" ("November 2, 2005 *WSJ* Article") attached as Exhibit 12.12 to Sovereign's Definitive Proxy Statement filed with the SEC on March 10, 2006, detailing the negative reaction of institutional shareholders and financial analysts alike to the Company's large stake sale to Santander:

> ***In what looks like a bid to counter a challenge from his largest shareholder, Sovereign Bancorp CEO Jay Sidhu has burned all of the Philadelphia company's investors. That shareholder, Relational Investors, contends the stock is underperforming and places the blame on Mr. Sidhu and a conflicted board of directors awash in Sovereign loans and business deals and overly generous pay***. After signaling its intentions since May, Relational formally launched a proxy fight last month to replace two board members.
>
> A few days later, Mr. Sidhu announced a big deal: ***Sovereign will pay what most investors think is an outsize sum—$3.6 billion—for Independence Community Bank, a regional thrift.*** To finance that deal, Sovereign sold just under 20% of itself (in newly issued shares) to Spanish bank Santander. ***The structure of the deals accomplishes two things. It dilutes Relational's predeal 7.3% stake, and that of every other shareholder, because there are now more shares outstanding, thereby solidifying Mr. Sidhu's position via a friendly new partner. And, because Sovereign is paying cash for Independence and selling less than 20% of itself, neither deal requires shareholder approval.***
>
> ***Mr. Sidhu denies structuring the deals to avoid having to sell it to his investors, but given the timing, that seems implausible. Either way, investors didn't like any of it: Sovereign's stock fell about 10% after the deal was disclosed, though it has recovered slightly since***. In an interview, Mr. Sidhu says the same thing he has been telling irate investors for the past week: that none of this was undertaken in response to the proxy fight, and that the

> Independence acquisition isn't overpriced and will bolster per-share earnings.
>
> ***Many analysts are rightly skeptical, including Bob Hughes of Keefe, Bruyette & Woods. He points out, for instance, that Sovereign is relying on 2006 earnings estimates that include the effects of share repurchases that, because of Sovereign's spending on the deal, won't happen***. Mr. Sidhu says his estimates will be proven in time.
>
> ***More important, it's easy to bolster earnings, but that doesn't mean you're getting a good return for the risk. Sovereign is paying 3.5 times Independence's tangible book value***. Since the beginning of 2003, similar bank deals (based on deposits) have cost 2.4 times tangible book value, according to SNL Financial.
>
> ***Mr. Sidhu argues that the price he's paying for Independence is effectively lower because he sold stock to Santander at a premium. Again, his logic is flawed. The transactions should be evaluated separately. Sovereign is spending the stock-sale money on something, and that something is too expensive. The money could be better invested elsewhere or returned to shareholders***. (Emphasis added.)

90. Besides expressing concern that Sovereign was overpaying for Independence, the Company's investors and financial commentators criticized the Board's lack of proper oversight of the deal due to their conflicts of interests. The Rational Investors' proxy filings reveal that it uncovered loans worth millions of dollars issued by Sovereign to its directors and executive officers. As the November 2, 2005 *WSJ* Article reported:

> ***The real worry is that Sovereign has done all this just to thwart Relational, and that Mr. Sidhu's board is letting him. As Relational head Ralph Whitworth is fond of saying, "This is a pre-Enron board in a post-Enron world."***
>
> For a close look at that world, frolic through Relational's proxy filing. ***Loans to Sovereign directors and executive officers have risen to $94.1 million, from $4.7 million six years ago. The bank offers no relevant disclosure about the loans, including terms, interest rates or performance***. Relational discovered the full extent of them only by cross-referencing Sovereign's Securities and Exchange Commission filings with records at the Office of Thrift

Supervision. In its most recent quarterly SEC filing, Sovereign left off about $24 million worth of loans. Sovereign says the SEC filings excluded credit extensions that haven't been drawn down.

***Mr. Sidhu says all the loans comply with federal rules and haven't been made on terms not available to other customers. He says most of the loans are not to directors of the holding company, Sovereign Bancorp, but to directors of its subsidiaries. Loans to the parent company's directors are an "insignificant percentage."***

***So why not disclose the details?*** "We will disclose them at the right time," he says.

***When not drawing fine distinctions about its disclosures, Sovereign—poof!—at times makes them disappear. Sovereign and its subsidiaries for years have paid office-space rent to one of its directors, Cameron Troilo. The payments skyrocketed to $618,700 in 2001, from $68,544 in 1996. Since 2001, however, Sovereign's filings have included no specific figures, just vague reassurances. Mr. Troilo's independence is unaffected, its latest filing says, because "the amount of rent paid... was not material" to Sovereign or the director.*** Mr. Sidhu reiterates that point. Mr. Troilo didn't return a call.

Mr. Sidhu dismisses Relational's complaints. "Their allegations challenging the integrity of the board are so ridiculous and so irresponsible that when the facts come out it will turn out very embarrassing to them," he says. The bank's corporate governance is "not just adequate; it's above average."

I have lavished praise in this space on hedge-fund activism and hedge-fund research, and often have denigrated that of the mutual funds and most traditional money managers. But ***the work of Relational, which buys stakes in companies it feels could benefit from a dose of shareholder activism, warrants praise in this case***.

***The firm has uncovered lots of troubling things about Sovereign and put them in black and white for any investor to see***. The firm will go through with its proxy fight and could win, given the current ire from fellow shareholders. In doing so, Relational, which has compounded annual returns after fees of 20% since mid-1996, is providing a road map for the newbie activist hedge funds out there.

> But the fight also highlights a risk: The corporate-governance flouters out there bite back. (Emphasis added.)

91. The following day, November 3, 2005, Franklin Mutual Advisers, LLC, the adviser to the Mutual Series funds, another large institutional shareholder of Sovereign, sent a letter to the Board indicating its dissatisfaction with the Acquisition. The letter provided in relevant part:

> We are investment adviser to funds that currently own in excess of 17 million shares of Sovereign, representing a holding of nearly 5% of the company's outstanding shares. We have owned a position in Sovereign stock continuously since 2001.
>
> ***We are writing to you to express our outrage over Sovereign's recently announced transactions with Grupo Santander and Independence Community Bank Corp**. **These transactions rank with the worst examples of management and board entrenchment and disdain for shareholder rights that we have witnessed in our history as public investors. Despite desperate efforts to justify these actions, the timing and structure of the transactions highlight the underlying motivation: an attempt by the Board and management to insulate themselves from an increasingly unhappy shareholder base and disenfranchise the true owners. The effect is not only to entrench management but also to destroy substantial shareholder value. With the Board's appalling history of conflicts of interest as a backdrop, this latest salvo confirms the self-interested mindset of the people who are supposed to be fiduciaries to the shareholders.***
> ***The terms of the Santander transaction, viewed as a whole, provide unreasonable and unjustifiably disparate rights and options to Santander, thus running afoul of several NYSE rules and state fiduciary law standards, and sound business judgment***:
>
> i. In the face of a recently announced proxy solicitation by Relational Investors, the company has agreed to sell an initial 19.8% stake to Santander, with generous gross-up rights and a direct facilitation of an additional 5.1% open market purchase by Santander, which would bring its total ownership stake to 24.9%. These issuances far exceed the 16.6% aggregate threshold permitted under the NYSE rules (19.9% as diluted by the issuance of the new shares as specified under the letter of the rule). Moreover, the voting agreements and other excessively favorable rights granted

to Santender under the Investment Agreement amount to a clear "change of control" within the meaning of a separate NYSE shareholder approval requirement, thus requiring that at a minimum the transaction be put to a shareholder vote. We understand that Santander intends to account for this on an equity basis, indicating their view of the investment as a greater than 205 stake in Sovereign.

ii. ***Equally as offensive are the efforts by the current Board and management to entrench themselves and disenfranchise the current shareholder base. To guarantee a perpetuation of the current Board, Santander will vote its full ownership stake in favor of all directors proposed by the current Board and against any person nominated by any other person. Since management and the Board control approximately 8% of the company's shares, this brings Santander and management's combined voting control to 33%, a clear controlling stake.***

iii. Even more egregious is the provision granting Santander a veto right over the firing of the CEO, knowing that there is significant existing shareholder disenchantment with the CEO. What could be more fundamental to the role of the Board and the shareholders in their entirety than the ability to determine who will manage this company? How can a Board respond to a known shareholder concern with management by abandoning its ability to change the top manager?

iv. The no shop, no talk and no response provisions of the agreement are unprecedented and simply cannot stand as a matter of sound corporate governance or sound business judgment. The various options granted to Santander to acquire 100% of Sovereign on terms and at a time largely of its choosing over the next 5 plus years, with very limited opportunity for a bona fide competitive process, are equally oppressive. The anti-takeover provisions in these agreements are also among the worst we have ever seen.

v. The result is that you have sold control of the company to Santander for what amounts to a thin premium if any, off of a depressed current share price. You then justify overpaying for Independence based on the receipt of this illusory premium. How can one seriously suggest, as Mr. Sidhu attempted to do on page 8 of his presentation at the November 2nd Ryan Beck conference, that the cost of the

Independence deal was only 36.56, since $5.44 of the premium came from the so-called Santander premium?

vi. The company will not even commit to holding its annual shareholder meeting at the regularly scheduled time, suggesting an attempt to dilute existing shareholder support for the ongoing proxy fight through the addition of a 20% plus shareholder who is practically and contractually bound to support the company's Board nominations.

vii. Finally, the sale does not contain a general fiduciary out; you as directors are inappropriately inhibited from fulfilling your legal obligations.

These terms viewed as a whole, show that the parties have substantially over-reached by agreeing to the provisions that are far more elaborate and takeover protective than any transaction precedent of which we are aware. Why are you so afraid to put the transaction to a shareholder vote, as First Fidelity did in 1991, when it agreed to a much more modest investment agreement with Santander? And if the Independence deal is such a compelling one, it should stand on its own merits and need not be subsidized by the sale of control to Santander.

Unfortunately, shareholders know the answers to these questions. ***The proposed acquisition of Independence Community Bank is driven more by empire-building and entrenchment than creating shareholder value.*** Sovereign has agreed to pay a significant premium for what we and others believe is a mediocre franchise (and at best worth several dollars less per share than the price you have offered, which management itself seems to admit). ***Sovereign's use of unjustifiably aggressive estimates of income growth in the pro forma earnings assumptions used to justify the acquisition is highly dubious. And even with the sale of equity to Santander, Sovereign's balance sheet will deteriorate. As a result, the ability to engage in share buybacks, which we view as a better use of capital, will be seriously impaired. Your empire building goals appear to go on forever, since you have conditioned any acquisition of the company by Santander on extreme long-term commitments to maintaining a 10-year ongoing role and presumably ongoing fees) for incumbent directors.***

***The management and Board of Sovereign have consistently tried to wrap themselves in the cloak of creating shareholder value, while at best paying lip service to serving the interests of the***

> ***company's owners.*** CEO Sidhu himself personified this cavalier attitude at the October 25 lunch presentation to investors. As reported that day by Dow Jones news service: "Sidhu fielded multiple questions about what would happen if Sovereign received an outside bid for the company...Sidhu shot down that notion: 'We would not respond if we receive an offer,' he said at one point." Despite more recent, and apparently better coached, attempts by Mr. Sidhu to soften his stance on consideration of other bids, we have grave concerns about the loyalty of any CEO and the competency of any Board willing to countenance such a clear breach of their fiduciary duties to shareholders.
>
> The reaction of the public investment community to these transactions clearly demonstrates that we are not alone in our views. We call upon the Board to acknowledge and accept its responsibility to manage Sovereign for the benefit of its shareholder owners, not for the benefit of management or individual Board members, and to put the transactions to a vote as you are required to do by law, by the NYSE rules and by conscience. This Board has become the model of poor, autocratic corporate governance, and this will be your legacy if change is not forthcoming. These actions as you have presently put them forward will not stand. We are currently evaluating all of our options as we call on you to consider yours. (Emphasis added.)

92. Despite the above-discussed concerns of Sovereign shareholders, the Acquisition was completed on June 1, 2006, as reported by the Company in its June 6, 2006 Form 8-K filing with the SEC. In connection with the Acquisition, Sovereign created its Metro New York segment in an attempt to expand its operations to the New York City metropolitan area.

93. The overpriced Acquisition ultimately turned out to be detrimental to the Company. By the time Sovereign filed its Form 10-K for fiscal year 2007 ("2007 Form 10-K"), on February 29, 2008, the goodwill impairment charge for its "Metro New York segment" which Sovereign described as "the net assets of Independence and substantially all of Sovereign's New Jersey banking offices" swelled to $943 million. *Id*. at 15.

#### (2) Sovereign Compromises Underwriting Standards For Its Subprime Loans Resulting In Substantial Asset Write-Offs And Deterioration Of Credit Quality

94. During the Class Period, Defendants knew or should have known that Sovereign had and would continue to have credit problems because it used lax or not-existent underwriting standards for its subprime, Alt-A, and home equity loans in a manner that was unsustainable. Defendants also knew or should have known that such compromised underwriting was likely to cause future credit problems because of the high risk that borrowers would default, be late on their mortgage bills, or worse still, be foreclosed. As the inevitable credit problems resulted, Sovereign desperately sought to maintain the impression that it was a sound financial institution, and delayed taking appropriate loan loss provisions and making other adjustments to its financial statements that would take into account its lowered underwriting standards. Because Sovereign did not communicate the true risks of investing in its stock to the Plan participants, and because its books did not accurately report the true financial state of the Company, the Plan participants were unable to make informed decisions about their retirement investments in Sovereign stock.

95. In the 2004 Annual Report, Defendant Sidhu stated that Sovereign hoped to "achieve the 300% shareholder return expectation that was set in 2000 and was "making substantial progress in all areas of the bank. . ." Defendants did not disclose that in order to bolster earnings, Sovereign was engaged in a number of risky business strategies, such as issuing loans to subprime borrowers, that were likely to undermine the Company in the future.

96. At the same time that Sovereign was granting credit with reduced underwriting, Sovereign promoted its self-proclaimed superior risk management practices. In its 2004 and 2005 Annual Reports, Sovereign described itself as having "sophisticated risk management." However, Sovereign did not adequately manage its risk and failed to make appropriate adjustments based on its reduced underwriting standards and its increased involvement in subprime Alt-A and other risky credit products.

97. Sovereign announced maintenance of "stable asset quality" as one of its major goals for 2006-2007 fiscal years. 2006 Annual Meeting Presentation at 22. Instead of working toward that goal, however, in mid-2006, Sovereign expanded its automobile lending far beyond any markets where it maintained its branches. Matthias Rieker, "Sovereign: Profit, Clarity Both Shy of Expectations," *American Banker*, January 25, 2008. This expansion was accomplished by "production offices" in the Southeast and Southwest United States, without appropriate underwriting.

98. In October 2006, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration jointly issued the "Interagency Guidance on Nontraditional Mortgage Product Risks") ("OCC Guidance"). The OCC Guidance directed financial institutions to address and mitigate the risks inherent in nontraditional or subprime mortgage products by ensuring that loan terms and underwriting standards were consistent with prudent lending practices, which entail a credible analysis of a borrower's repayment capacity.

99. The OCC Guidance provided that such loans should be underwritten based on a borrower's ability to make fully-amortizing payments at the fully-indexed interest rate. For products like payment option ARMs that permit negative amortization, the OCC Guidance provided that a lender's underwriting analysis should be based on the initial loan amount, plus any balance increase that could accrue given the maximum potential amount of negative amortization permitted by the loan.

100. The OCC Guidance also addressed the practice of relying on reduced documentation, particularly unverified income, to qualify borrowers for subprime mortgages.

This practice substituted assumptions and alternative information for verified data for use in analyzing a borrower's creditworthiness and ability to pay. Because such practices presented significant risk, including the risk of fraud, they were to be used sparingly. Accordingly, the OCC guidance cautioned that reduced documentation should be accepted only where there were mitigating factors that minimized the need for verification of repayment capacity.

101. Throughout the Class Period, Defendants knew or should have known that, in light of the Company's lax or non-existent underwriting practices of subprime, Alt-A and home equity loans, Sovereign's credit quality had deteriorated. Yet, the Company failed to reserve or adequately reserve and make adjustments based on what it knew or should have known was the likely outcome of its compromised underwriting and involvement with structured credit products. These risky practices resulted in the inflation of Sovereign's stock.

102. Over the first three fiscal quarters of 2006, Sovereign reported that its asset quality remained stable. For example, in its October 17, 2006 press release (made part of the related October 18, 2006 filing with the SEC), announcing its 2006 fiscal third-quarter results, Sovereign stated with regard to its asset quality that:

> Asset quality statistics remained consistent with prior periods in the third quarter of 2006. Annualized net charge-offs were .23% of average loans for the third quarter, compared to .23% in the second quarter of 2006. Non-performing loans to total loans increased one basis point from second quarter levels to .37%. Non-performing loans increased by $13.1 million from last quarter to $232.8 million. The allowance for credit losses to non-performing loans was 240% at September 30, 2006, as compared to 251% at June 30, 2006 and 257% at September 30, 2005. Sovereign's provision for credit losses was $45.0 million this quarter, compared to $44.5 million in the second quarter of 2006 and $20.0 million in the third quarter of 2005. The provision for credit losses was higher during the recent quarter to provide for a non-performing loan sale of correspondent home equity loans, a decision to self-insure a portion of correspondent home equity loans, and a high level of commercial loan growth.

103. Later that day, Sovereign's management conducted a conference call with investors, during which, its then Chief Financial Officer, Mark R. McCollom ("McCollom"), made the following comments regarding the Company's asset quality:

> You've heard me say throughout this year that our credit quality continues to hold up reasonably well. Better than our original forecast, and that overall statement continues to be true. You've also heard me say that we expect credit quality to mildly weaken over the next few quarters.

Q3 2006 Sovereign Earnings Conference Call.

104. Sovereign's stock closed at $23.33 on October 17, 2006.

105. Shortly before the 2006 fiscal third-quarter results were released, Sovereign announced the resignation of Defendant Sidhu, who had been the chief architect of the Company's auto loan expansion into new markets, and the appointment of Defendant Campanelli as the succeeding President and CEO. According to Sovereign's October 13, 2006 Form 8-K filing with the SEC, Defendant Sidhu's "resignation and retirement came in the face of a threatened termination by the Company." Sovereign later announced that it would record a charge in the 2006 fiscal fourth-quarter of $18.9 million, after tax, related to Defendant Sidhu's resignation agreement. Defendant Sidhu retired from Sovereign with a comprehensive benefits package, before Sovereign disclosed the extent to which its speculative credit practices, launched in part by Defendant Sidhu, impacted the financial results of the Company.

106. Subsequent to the resignation of Defendant Sidhu, Sovereign announced in its December 21, 2006 Form 8-K filing with the SEC, the departure of its then Vice Chairman and Chief Administrative Officer, Lawrence M. Thomson, Jr., effective January 5, 2007.

107. At the end of 2006. Sovereign purported to put up for sale some $8.0 billion in assets, which required that at least $4.3 billion of them be "reclassified." At that time, Sovereign

claimed to have sold \$3.4 billion of the correspondent equity loans in the first quarter of 2007. Although Sovereign had always touted its credit quality and risk management, it later conceded in its 2007 Form 10-K that the "majority of the correspondent home equity loans [in the group sold] were non prime in nature and were held by customers outside of Sovereign's branch footprint." *Id*. at 13. It was also not until later that Sovereign disclosed that it had established a reserve for the sold loans because they "may need to be repurchased from the buyers of these loans if any breaches of certain representation and warranty clauses contained within the sale agreement are discovered in future periods." *Id*.

108. In addition, Sovereign only later disclosed that it was "required to further write down the \$3.4 billion of correspondent home equity loans that we sold in the first quarter due to lower pricing on the execution of the sales as a result of the deterioration in the loan portfolio and lower pricing in the market price for non-prime loans." 2007 Form 10-K at 13. Also, Sovereign subsequently disclosed that it "will begin recording charge-offs in 2008 against the allowance for loan loss beginning in the first quarter on this retained portfolio." *Id*. at 16. In short, a troubled loan portfolio that Sovereign claimed to have sold became a source of additional potential liabilities, a fact that was not adequately disclosed at the time of the sale of the loans.

109. On December 21, 2006, after its executives' departures, Sovereign presented a new long-range plan to improve its operating performance, which included a "comprehensive review of Sovereign's balance sheet." Under the topic "Improving Capital Position and Quality of Earnings," Sovereign stated that among the goals of its "Balance Sheet Optimization" was to:

- Diversify the balance sheet to ensure the bank is not overly sensitive to certain interest rate or economic environments
- Decrease interest rate risk and improve asset quality

110. As part of its long-range plan, Sovereign announced that it intended to sell approximately $10.0 billion in wholesale assets and $10.0 billion in wholesale funding. $4.5 billion of the $10.0 billion in wholesale assets comprised of "correspondent home equity loans." The Company stated that it sold these assets for, among other reasons, "credit and interest risk management purposes." December 21, 2006 Presentation at 11.

111. Just several days after, on December 27, 2006, Sovereign announced in its Form 8-K filing with the SEC that Alan H. Fishman, the then President and Chief Operating Officer of Sovereign Bank, the wholly-owned banking subsidiary of Sovereign, and Chairman and Chief Executive Officer of the New York Division of Sovereign Bank, resigned effective December 29, 2006.

112. On January 17, 2007, Sovereign announced its 2006 fiscal fourth-quarter and full fiscal year 2006 earnings, that included a $296 million loss related to the sale of $4.5 billion correspondent home equity portfolio. In a press release, made part of a related January 18, 2007 Form 8-K filing with the SEC, the Company commented in regards to its asset quality that:

> Recent strategic decisions to reduce exposures to wholesale assets impacted certain credit quality statistics for the quarter. Annualized net charge-offs were 2.75% of average loans for the fourth quarter, compared to .23% in the third quarter of 2006 and .21% a year ago. In dollars, net charge-offs were $436.0 million in the fourth quarter versus $35.3 million in the third quarter and $23.2 million a year ago. ***Included in net charge-offs during the quarter were the credit charges related to $4.5 billion of correspondent home equity loans and $2.9 billion of residential mortgage loans, in the amount of $382.5 million and $7.1 million, respectively***. Excluding these special charges, net charge-offs were .29% of average loans. Also included during the fourth quarter were $13.0 million of charge-offs related to the correspondent home equity portfolio prior to its held-for-sale designation and a $14.0 million charge-off related to one commercial credit, which in total impacted the fourth quarter net charge-off rate by 17 basis points.

> Non-performing loans to total loans held for investment decreased two basis points from third quarter levels to .35%. Non-performing loans decreased by $38.9 million from last quarter to $193.9 million. The allowance for credit losses to non-performing loans was 251% at December 31, 2006, as compared to 240% at September 30, 2006 and 231% at December 31, 2005.
>
> Sovereign's provision for credit losses was $366 million this quarter, compared to $45.0 million in the third quarter of 2006 and $26.0 million in the fourth quarter of 2005. ***As discussed earlier, the provision for credit losses was higher during the recent quarter by $296 million due to special charges related to the pending sale of the correspondent home equity portfolio***. (Emphasis added.)

113. In an investor's conference call on January 17, 2007, McCollom acknowledged that the Company could not sell approximately $650 million of the $4.5 billion in home equity loans that it planned to sell, and had to mark these down. McCollom explained: "We believe we have marked them to a level where the pain is behind us and that the overall execution will prove to be the best interest for our shareholders." Q4 2006 Sovereign Earnings Conference Call.

114. Sovereign continued its practice of touting its new and purportedly dynamic product, the loans in the Southeast and Southwest. However, Defendants knew or should have known that these auto loans were being written with such minimal underwriting that they were likely to involve subsequent losses. For example, McCollom made the following comments regarding the quality of Sovereign's home and auto loans:

> As our portfolios have several factors that compare very favorably to broader issues that are affecting the industry in recent months. For one, our portfolios, if you recall, had a blended FICO of 680 which implied that there was a mix of both prime and sub-prime assets in this sale. Number two: we stopped originating assets in lids is business in January 2006 and for those of you who have tracked this, the worst vintage year for credit is turning out to be 2006 and we never participated in that vintage. Number three: because the portfolio is seasoned we have no issues with early payment defaults that are causing others to revalue their portfolios recently.

* * *

> Moving on now to auto loans then. Our auto loans had a very strong quarter with average balances growing $557 million and now stand at $5.2 billion. The yields expanded nicely from fourth quarter levels, 35 basis point increase to end the quarter at — average for the quarter, rather, 6.74%. ***We continue to see very strong traction from the southeast and southwest groups that we added our franchise back in the middle of*** 2006. The investment portfolio declined about $530 million on a spot balance basis and about $370 million on a average balance basis during quarter which was consistent with our expectations.

* * *

> Moving on to credit quality. Our net charge offs improved during the quarter, with net charge offs of $24 million. This was 16 basis points on average loans compared $46 million or 29 basis points of average loans last quarter, excluding the mark to market adjustments. As expected, consumer net charge offs decreased $16 million as a result of the correspondent home equity loans being designated as for held for sale.
>
> The next number I will give you color on is our provision, which came in at $46 million or $22 million higher than net charge offs and this was due to growth in our core lending areas such as auto loans and certain commercial segments, as well as a mild weakening in credit. We are beginning to see a mild weakening in the commercial sector, with commercial non-accruing loans increasing $18.2 million or 12% over last quarter. Total non-accruing loans increased $23 million, or 12% during the quarter, which required additional reserves. ***But, generally speaking credit quality continues to hold up within our expectations***. Our classified and criticized loans are at the same levels they were a year ago and total past due loans are down from the fourth quarter. (Emphasis added.)

Q4 Sovereign Earnings Conference Call.

115. One analyst asked McCollom specifically about charge-offs in the auto lending sector:

> KEN HOUSTON, ANALYST, BANK OF AMERICA SECURITIES: Hi, good morning. A couple of questions first of all

> Mark to your comments on charge offs and provisions expense. If we're to expect that charge offs are going to kind of rise as credit deteriorates and you mentioned providing for both that and growth ***should we expect the same magnitude of overprovisioning relative to charge offs as we look ahead***?
>
> MARK: ***I think you should expect to see provision continue to exceed charge offs***. You obviously — this past quarter Ken, saw an up tick in charge offs in commercial real estate. If you got from our comments here we think that number over the next couple of quarters should moderate and not necessarily grow significantly from first quarter levels. But I think it is reasonable to assume that especially because you know if you take our auto portfolio, which is poised continue to have solid growth throughout year, that we will need to provide for both growth and a general weakening in credit.
>
> KEN HOUSTON: But not necessarily at the same magnitude of like the $22 million you had this quarter?
>
> MARK MCCOLLOM: Yes. I think at this point it's hard to look in the crystal ball out 2 and 3 quarters, but I think you should expect to see it be over charge offs, you know how much over charge offs will depend on the specific migration of each portfolio and the specific amount of growth that you see in the core businesses. (Emphasis added.)

*Id*.

116. Also, during this conference call, McCollom commented on the Company's outlook with regard to its auto lending business:

> BOB HUGHES: Okay Mark, you talked a little bit about the benefits of the lift out of those two teams in the southeast and southwest on your auto production but I think the pick up in the yield quarter to quarter still seems striking can you give us a sense for where -- writing new paper or what the yields on loans you originated in the quarter were and secondarily does that suggest any move down in the credit spectrum?
>
> MARK MCCOLLOM: Sure, actually the increase really isn't all that surprising when you go back and look to a 13 month trend in that business which I know you only see the quarterly snapshots, but I mean Bob we've had very consistent increases over the last year of between 5 and 10 basis points a month increase in yields.

> Now we saw 33/34 basis points lift in yield this is quarter but that's because we are also now the percentage of new production is increasing, you know were -- back in the middle of last year we were doing maybe $150 to $200 million a month and in the first quarter of this year now we did just under $1.3 billion of production so we are doing more than $100 million a week now. ***When you look to FICO scores, the FICO scores are consistent with what they have been for the last couple of years***. The mix between new and used is — you know we have always been within a couple percentage points, it's sort of 50/50 between new and preowned. ***So, there is really nothing unusual there, it's just taking our business model that previously was just in the northeast footprint and expanding it into these two new geographies***.
>
> * * *
>
> JAMES ABBOTT: On the auto, jumping around obviously a little bit here, but on the auto how many is the split between A been B paper?
>
> MARK MCCOLLOM: Its vast majority would be A papers. The blended FICO in our autobusiness in the 720 range. (Emphasis added.)

*Id*.

117. McCollom also told investors during this call: "We continue to be bullish on this [auto] loan segment, as we like the short duration." Matthias Rieker, "Sovereign: Profit, Clarity Both Shy of Expectations," *American Banker*, January 25, 2008.

118. Sovereign's stock closed at $25.01 on January 17, 2007.

119. On January 31, 2007, Sovereign made a presentation at the Citigroup Financial Services Conference. Company executives stated that among its objectives for 2007 was to "provide greater transparency and understanding of Sovereign's businesses and strategy." Jan. 31, 2007 Form 8-K, Presentation at 12.

120. On April 18, 2007, Sovereign announced its 2007 fiscal first-quarter earnings, reporting net income for the first quarter of 2007 of $48.1 million, or $.09 per diluted share, as compared with $141 million, or $.36 per diluted share, for the first quarter of 2006.

121. As part of its earnings announcement, made part of its April 19, 2007 Form 8-K filing with the SEC, Sovereign reported that its credit quality had improved since the previous quarter and a year ago period:

> Annualized net charge-offs were .16% of average loans for the first quarter, compared to .29% (excluding special charges) in the fourth quarter of 2006 and .26% a year ago. In dollars, net charge-offs were $24.1 million this quarter versus $46.4 million (excluding credit charges related to the correspondent home equity portfolio and residential mortgage loans) in the prior quarter and $28.3 million a year ago.
>
> Non-performing loans to total loans held for investment increased 4 basis points from fourth quarter levels to .39%. Non-performing loans increased by $23.7 million from last quarter-to $218 million. The allowance for credit losses to non-performing loans was 231% at March 31, 2007, as compared to 251% at December 31, 2006 and 239% at March 31, 2006.
>
> Sovereign's provision for credit losses was $46.0 million this quarter, compared to $366 million in the fourth quarter of 2006 and $29.0 million in the first quarter of 2006. The provision for credit losses in the prior quarter included a $296 million lower of cost or market adjustment on the correspondent home equity portfolio held-for-sale.
>
> Sovereign has limited exposure to both sub-prime and Alt-A residential mortgages. Sovereign's sub-prime mortgage exposure is approximately $320 million, or about 2% of residential mortgage loans outstanding. Sovereign's Alt-A exposure is $2.6 billion, or 18% of residential mortgage loans outstanding, down from about 25% at year-end due to the sale of residential mortgage loans during the quarter. Delinquencies in the Alt-A mortgage portfolio were 3.43% at March 31, 2007 as compared to 3.79% at year-end and 2.14% a year ago.

122. Remarking on the fiscal first-quarter of 2007, Defendant Campanelli remarked that:

> We are on-track with respect to our cost-cutting goals, as our G&A expenses declined $25 million on a linked quarter basis. We substantially completed our balance sheet restructuring during the quarter, and despite the additional charges required, we are pleased to report reductions in wholesale assets in excess of $6 billion, and reductions of wholesale borrowings in excess of $9 billion. ***Credit quality remains within an expected tolerance***. ***Our core commercial and consumer loan growth was strong during the quarter***. (Emphasis added.)

123. Sovereign's stock closed at $23.92 on April 18, 2007.

124. On May 3, 2007, Sovereign held its 2007 Meeting of Shareholders. The Company executives told their shareholders that one of the benefits of restructuring was that it "Improves risk profile of balance sheet" and "Enables management to fully focus attention on building core competencies." 2007 Annual Meeting Presentation at 21.

125. On July 18, 2007, Sovereign announced its 2007 fiscal second-quarter results, reporting net income for the second quarter of 2007 of $148 million, or $.29 per diluted share as compared with a net loss of $59.1 million, or ($.15) per diluted share, for the second quarter of 2006.

126. In the related June 19, 2007 Form 8-K filing with the SEC, the Company asserted that its credit quality remained steady:

> Annualized net charge-offs were .18% of average loans for the second quarter, compared to .16% linked quarter and .23% a year ago. In dollars, net charge-offs were $25.6 million this quarter versus $24.1 million in the prior quarter and $29.4 million a year ago.
>
> Non-performing loans to total loans held for investment decreased one basis point from first quarter levels to .42%. Non-performing loans decreased by $2.1 million from last quarter to $240 million. The allowance for credit losses to non-performing loans was 217%

> at June 30, 2007, as compared to 208% at March 31 and 251% at June 30, 2006.
>
> Sovereign's provision for credit losses was $51.0 million this quarter, compared to $46.0 million in the first quarter and $44.5 million in the second quarter of 2006. Provision for credit losses exceed net charge-offs this quarter by $25.3 million to reserve for the strong loan growth experienced in the commercial and auto loan portfolios in addition to mildly weakening credit quality that resulted in migration of credit risk ratings.

127. In an investors' conference call later that day, McCollom remarked as to the Company's asset quality that:

> ***Moving on to asset quality, credit quality continues to hold up reasonably well***, although consistent with last quarter, we are seeing some mild weakening in certain categories.
>
> * * *
>
> Our NCOs, our net charge-offs increased slightly for the quarter with net charge-offs at 25.7 million, or 18 basis points on our average loans, compared to 24 million, and 16 basis points on average loans last quarter. Our provision for the quarter was 51 million and this was 25.3 million higher than our net charge offs. You might ask why. Well, this was due to two principal factors.
>
> One due to growth in our core lending areas, such as auto loans and certain commercial segments, where as you grow the portfolio you are just required to put more past rated reserves against those assets, as well as a migration downward in credit risk ratings, due to a mild weakening, and an increase in classified and criticized loans in the commercial sector. This general weakening trends also resulted in a growth in the allowance as a percentage of loans which increased for the first time in several quarters, from 90 bips up to 92 basis points.
>
> Total nonaccruing loans were down 2.1 million from the first quarter. We saw an improvement in commercial nonperformers, down 9.8 million. But this was partially offset by increases in consumer nonperforming loans. ***Credit quality continues to hold up within our expectations***. Our classified and criticized loans were up slightly from last quarter. However, they are below where they were a year ago, as are total past-due loans.

> ***Another component of our credit quality worth noting is the performance on the retained portfolio of home equity loans that we elected not to sell last quarter***. As a reminder, this portfolio totaled about $574 million at March, and consisted then of about 412 million of first lien home equities, and 162 million of second lien home equities. As of June, this portfolio has come down about 85 million or so, to 491 million, and that is under 1% of our loan portfolios now through some sales, some pay downs and charge-offs.
>
> I don't need to tell any of you that recent events in the subprime space do not point to any positive news. ***As a reminder we wrote these assets down to what we believe is a conservative value as of March, and we will continue to monitor this asset class very closely as the next few quarters unfold***. (Emphasis added.)

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128. During the call, Sovereign's management also reaffirmed the Company's purportedly high underwriting criteria for its auto loans. McCollom stated: "we haven't compromised FICO scores, or haven't moved the mix materially off of where it has been historically, in terms of new and used." *Id*.

129. Sovereign's stock closed at $21.36 on July 18, 2007.

130. Despite the worsening global credit conditions in the summer of 2007, Sovereign assured investors of the quality of its control mechanisms, stating in its Form 10-Q filed with the SEC on August 9, 2007 ("August 9, 2007 Form 10-Q") that ***"[a] comprehensive analysis of the allowance for loan losses and reserve for unfunded lending commitments is performed by the Company on a quarterly basis***." (Emphasis added.)

131. On October 5, 2007, Sovereign announced that its 2007 third quarter would reflect a substantial increase in the provision of credit losses of between $104 and $114 million to $155-$ 165 million pre-tax compared to $51 million in the second quarter.

132. Sovereign's stock closed at $17.73 on October 5, 2007.

133. On October 17, 2007, Sovereign announced its 2007 fiscal third-quarter results. The Company issued a press release, made part of a related Form 8-K filing with the SEC, that provided with respect to Sovereign's asset quality that:

> **Asset Quality**
>
> Annualized net charge-offs were .24% of average loans for the third quarter, compared to .18% linked quarter and .23% a year ago. In dollars, net charge-offs were $33.6 million this quarter versus $25.7 million in the prior quarter and $35.3 million a year ago.
>
> Non-performing loans to total loans increased 7 basis points from second quarter levels to .49%. Non-performing loans increased by $42.5 million from last quarter to $282 million. However, $41.5 million of this increase is related to the retained correspondent home equity portfolio. Non-accruing loans from this portfolio were previously excluded from the non-accruing loan balance of $239 million last quarter, as reserves for this portfolio were segregated. Excluding these loans, non-accruing loans increased about $1.0 million over last quarter. The allowance for credit losses to non-performing loans was 230% at September 30, 2007, as compared to 217% at June 30 and 240% at September 30, 2006.
>
> Sovereign's provision for credit losses was $162.5 million this quarter, compared to $51.0 million in the second quarter and $45.0 million in the third quarter of 2006. The provision for credit losses exceeded net charge-offs this quarter by $129 million. As previously announced, $47 million of the increase in provision is related to Sovereign's remaining correspondent home equity portfolio. As of September 30, 2007, this portfolio balance was $415 million, net of discounts and reserves. Many of these correspondent home equity loans are non-prime loans which have been impacted by the deterioration in the housing market and the reduction in the number of mortgage lenders in the industry causing an elevated level of delinquencies and charge-offs. Approximately $40 million of the increase in provision is related to management's decision to increase reserves for the indirect auto lending portfolio in response to recent and anticipated higher net credit losses, as well as portfolio .growth. The remaining increase in provision is related to the loan loss reserves required to cover exposures, as well as increased charge-offs, in our commercial

> portfolio, primarily in the construction lending and commercial real estate portfolios.

134. Commenting on results for the third quarter of 2007, Defendant Campanelli stated that "Because of the charges taken as a result of dislocations in the mortgage market, liquidity issues impacting the broader sector and a Sovereign-specific issue related to strengthening reserves in our indirect auto business, our earnings for the quarter are disappointing. Looking beyond these items and at our core businesses, I believe there are many things going well within our company, and certain operating trends such as net interest margin and continued expense discipline are heading in the right direction." *Id*.

135. During the question and answer part of the Investors Conference Call later that day, credit quality was discussed further:

> **James Abbott - Friedman, Billings, Ramsey & Co.**
>
> Okay, Thank you. And then as you look through that portfolio, what was the main driving factor behind increasing reserve, was it the early payment defaults that caused a substantial increase and then maybe if you could put some color around that, and then also if you could look down through the FICO spectrum, where are you seeing... are you seeing the falls at the 700 FICO core level or above? Or is it all occurring down in the low 600 or what can you tell us on that?
>
> **M. Robert Rose - Chief Risk Management Officer**
>
> Well, I think you have several questions there. What we did was, we went through this portfolio and examined in the usual ways delinquency roll rates, FICO analysis, where the losses were coming from, even down on a dealer-specific basis. And the losses are as Mark has indicated, had been skewed more to our expansion market where we are undertaking new business, and as you expand into a new business, you do experience slightly higher losses. Going back through the FICO band, overall the FICO... pardon me, profile of this portfolio is about 62% of it would be over 700 and that varies according to the sector that we're in. In the Northeast it's somewhere around 64%. But in some of the expansion markets, it's a little lower as we were working, some of the second tier and

third tier credits there. The defaults are coming from a fairly broad range of the FICO scores James, not concentrated in any one sector in the FICO range.

* * *

**Richard Weiss - Janney Montgomery Scott**

Okay. And also on the correspondent home equity low, how do you value the sub-prime loans today since, it's just a pretty difficult for everybody and Fed reserves against that?

**Joseph P. Campanelli - President and Chief Executive Officer**

Yes, I think it was very difficult from a year ago, where I think we are one of the first to decide that that's the business that we don't want on our balance sheet. It had been at discontinued business it starting from I guess the late '05 to early '06 periods but was just in run off mode. We went to market very early on and received the variety of goods. Spread at that time is that more recognize the market start to deteriorate. I think a lot of people still having great deal of difficulty in establishing with the range who would be based on our payment history and this is your portfolio. Some of the stats flows we've looked at the positive of the fall was variable above growth in this team came up with a methodology that we felt was appropriate to apply the portfolio to corresponding write-down. Bob do you want to add.

**M. Robert Rose - Chief Risk Management Officer**

Well the benefit unfortunately in parts of this portfolio. We have lost a fair percentage of the principle balance so if one goes back and adds back in, in the second mean portion in particular add back in the charge offs that have been taken since we brought it back on our books and add that to reserves that have been placed on that second mean portfolio we've in access of a 46% reserve and you know unfortunately in this business for losses of binary you need to lose it all in the case of second lien loans in this quality range or you lose a little there's not a lot of middle ground. But we think the second past through this portfolio through our analysis of the previous of falls we stressed the property value quite a bit off of their current values and we think that the amount of money that we have here is adequate to see it through to its conclusion.

136. Sovereign's management also discussed the Company's auto loans portfolio during the conference call:

> JAMES ABBOTT, ANALYST, FBR CAPITAL MARKET: Okay, thank you. And then as you look through that portfolio, what was the main driving factor behind increasing the reserve? Was it the early payment defaults that caused a substantial increase and maybe if you could put some color around that. And then also if you can look down through the FICO spectrum, where are you seeing - are you seeing defaults at the 700 FICO square level and above or is it all occurring down in the low 600s or what can you tell us on that?
>
> BOB ROSE, CHIEF CREDIT RISK MANAGEMENT OFFICER, SOVEREIGN BANCORP: Well, I think you have several questions there. What we did was we went through this portfolio and examined it in the usual ways, delinquency roll rates, FICO analysis, where the losses were coming from even down on a dealer specific basis. And the losses are, as Mark has indicated, have been skewed more to our expansion market where we are undertaking new business, and as you expand into a new business, you do experience slightly higher losses. Going back through the FICO bands — overall, the FICO portfolio — pardon me — profile of this portfolio is about 62% of it would be over 700 and that varies according to the sector that we're in and the Northeast, it's around 64% but in some of the expansion markets it's a little lower as we were working some of the second tier and third tier credits there. The defaults are coming from a fairly broad range of the FICO scores, James, not concentrated in any one sector in the FICO range.
>
> * * *
>
> RICK WEISS: Oh, okay. I was just wondering, I'm having some phone problems today, I think. I just want to go back to the indirect auto lending and kind of ask why you're increasing them so rapidly, as the charge-offs are ramping up and also, what kind of limit do you have on the portfolio or the indirect portfolio as a percentage of the total portfolio?
>
> JOE CAMPANELLI: Yeah, you could anticipate slower growth now. It was when you enter a new market on the base of zero, obviously it has more disproportion at impact on your growth rates, but through a combination of things the growth is moderating to a more normalized basis than looking at that as more

> of a mature market. So we anticipated modest single digit growth based on where we are today and where we see the economy going both on total car sales within the country and the concerns over consumer credit being much more conservative.
>
> RICK WEISS: Okay, when you're saying single digit growth rate is that on an annual basis?
>
> JOE CAMPANELLI: Yes.
>
> JAMES ABBOTT: Okay, well that's helpful. My main question that I was asking — so I'll switch back to the auto portfolio just as a follow-up. Of the charge-offs of the roughly $20 million in charge-offs in auto loans this quarter, how much of that came from loans that were less than a year old and how much of it was from loans that were more than a year old? I'm trying to get a sense of seasoning on these.
>
> MARK MCCOLLOM: James, ***as I had mentioned before, especially in the Southeast there was a disproportionate amount of first-payment defaults, which has triggered a lot of the changes that we're making***. If you look to the -- to the in-market portion of our portfolio you'd expect to see that those losses would track what a normal seasoning curve would show.
>
> JAMES ABBOTT: Okay. Alright. Thanks again. (Emphasis added.)

*Id*.

137. Even having acknowledged "a disproportionate amount of first-payment defaults" from its customers, Sovereign continued to maintain in its November 9, 2007 Form 10-Q filed with the SEC for the fiscal third-quarter of 2007, that its risk management procedures were adequate, stating that, "our principal executive officer and our principal financial officer concluded that ***the Company's disclosure controls and procedures were effective*** as of September 30, 2007…" (Emphasis added.)

138. The Company only began to acknowledge the severity of the impact of credit market-meltdown on the business and operations of Sovereign on January 14, 2008, when it issued a profit warning, and made the shocking announcement in its Form 8-K filing with the

SEC ("January 14, 2008 Form 8-K") that fiscal fourth-quarter 2007 charges were expected to include substantial charges relating to goodwill impairments, impairments of Fannie Mac and Freddie Mac preferred stock securities and loan losses. Specifically, the January 14, 2008 Form 8-K provided that:

> On January 14, 2008 [Sovereign] issued a press release announcing that it anticipates that its results for the fourth quarter 2007 will be adversely impacted by the following charges expected to be recorded in the fourth quarter of 2007: (i) a pre-tax, non-recurring, non-cash charge of approximately $1.4 billion related to goodwill impairment; (ii) a pre-tax, non cash charge of $180 million related to impairment of certain Fannie Mae and Freddie Mac preferred stock securities; (iii) a provision for credit losses of approximately $140 million; and (iv) pre-tax charges of approximately $27 million related to financings provided to two mortgage companies that have defaulted on certain agreements.

139. As to goodwill impairments, Sovereign announced that it would take a charge of $600 million from its Consumer segment due to, among other reasons, its decision to stop originating auto loans in the Southeast and Southwest.

140. Further, Sovereign explained that approximately $800 million of the goodwill impairment was primarily related to its acquisition of Independence, discussed *supra*, because "revenue and deposit growth have been less than expected." As Sovereign paid for Independence in cash, it could not adjust the relative value of the deal as its own share price fell. Matthias Rieker, "Deals Done During Boom Get a Second Accounting," *American Banker*, January 15, 2008.

141. Despite forecasting an approximately 1.4 billion dollar loss in the fiscal fourth quarter 2007 and failure of certain financing deals due to loan defaults by two unspecified mortgage companies, Defendant Campanelli continued to insist on the underlying financial health

of the Company and the strength of its financial controls, remarking in the January 14, 2008 Form 8-K that:

> Sovereign is a fundamentally sound financial institution.
>
> ***
>
> Consistent with our disciplined management approach, we will continue to analyze credit risk and keep investors informed.

142. Shortly after the filing of Sovereign's January 14, 2008 Form 8-K, however, the *Associated Press* reported in a January 17, 2008 article entitled "Moody's to Review Sovereign Bancorp," reported that Moody's Investors Service ("Moody's"), a credit agency, will review Sovereign's rating for a possible downgrade:

> Moody's is reviewing Sovereign's senior rating, which is currently an investment-grade "A3"
>
> The review comes after Sovereign said it would take an impairment charge in the fourth quarter to reflect declining value in its consumer and New York metro segments.
>
> Moody's will focus on Sovereign's ability to enhance its capital position, which is below similarly rated competitors. Moody's said it might be difficult for the bank to increase its capital ratios in the near term because of "continued weak profitability."
>
> Sovereign also could face rising delinquencies in its auto, home equity and commercial real estate portfolios in the coming months, Moody's said.

143. Less than 10 days later, on January 23, 2008, Sovereign finally revealed the true depth of the crisis the Company was facing, reporting in its Form 8-K filing with the SEC ("January 23, 2008 Form 8-K"), a net loss of $1.6 billion or $3.34 per share for the fiscal fourth quarter of 2007 and a $1.3 billion net loss or $2.85 per share for the full fiscal year 2007.

144. Sovereign also announced that it was discontinuing the Company's quarterly common stock dividend to help bolster capital and mitigate risk as it addressed the ongoing challenges in the financial services industry. January 23, 2008 Form 8-K.

145. Further, Sovereign admitted that goodwill and other intangibles constituted 54.3% of stockholder equity at December 31, 2007, of which goodwill was $3.4 billion. *Id*.

146. With respect to its credit quality, Sovereign reported in its January 23, 2008 Form 8-K that:

> **Asset Quality**
>
> Sovereign has increased its allowance for credit losses by $88 million due primarily to a $50 million increase related to its indirect auto loan portfolio. Net credit losses related to indirect auto loans have increased in recent quarters and are expected to remain elevated through the first half of 2008. Although Sovereign's residential and home equity portfolios have continued to perform well, the allowance for credit losses were increased for these portfolios given the continuing slowdown in the housing sector as well as general economic conditions and their potential impact on the loan portfolio. ***This raises Sovereign's allowance for credit losses at year end to near historical high reserve ratios at 1.28% up from .88% a year ago and 1.14% last quarter***.
>
> Sovereign's provision for credit losses was $148 million this quarter, compared to $163 million in the third quarter and $366 million in the fourth quarter of 2006. The provision for credit losses in the fourth quarter of 2006 included a lower of cost or market adjustment on the correspondent home equity portfolio of $296 million.
>
> Annualized net charge-offs were .42% of average loans for the third quarter, compared to .24% linked quarter and .29% a year ago, which excludes the lower of cost or market valuation adjustment recorded in the fourth quarter of last year related to correspondent home equity loans. In dollars, net charge-offs were $60.5 million this quarter versus $33.6 million in the prior quarter and $53.5 million a year ago.
>
> Non-performing loans to total loans increased 4 basis points from third quarter levels to .53%. Non-performing loans increased by

> $21.9 million from last quarter to $304 million. The allowance for credit losses to non-performing loans was 242% at December 31, 2007, as compared to 230% at September 30 and 234% at December 31, 2006. (Emphasis added.)

147. Commenting on results for the fourth quarter of 2007, Defendant Campanelli stated that "We continue to take the necessary steps to focus on our core businesses and markets and execute on our strategic initiatives. We recently made the decision to discontinue our automobile lending originations in the Southeast and Southwest as losses in these markets have been higher than forecasted and we will provide for losses in this portfolio as it runs off." *Id*.

148. As the *Reuters* January 23, 2008 article, entitled "Sovereign Bancorp posts $1.6 billion loss" reported:

> Part of the write-down reflected weakness in consumer lending, which has been hurt by deteriorating credit and a decision to halt auto loans in southeast and southwest U.S. states. The rest covered New York operations, which consist largely of the former Independence Community Bank Corp.
>
> …Sovereign also took a $180 million charge for mortgage investments, reducing earnings by 23 cents per share.
>
> Critics had complained when the company's former chief executive, Jay Sidhu paid $3.6 billion for Independence, and simultaneously sold a 20 percent stake in Sovereign for $2.4 billion to a Spanish bank, Banco Santander SA. Santander's stake later rose to about 25 percent.

149. The stunning amount of the loss incurred by Sovereign in the fiscal fourth quarter 2007 and the full fiscal year 2007, indicates that contrary to systematically engaging in "***[a] comprehensive analysis of the allowance for loan losses***," as the Company boasted in its August 9, 2007 Form 10-Q, the quality of the Company's internal controls were actually severely deficient in monitoring the deteriorating market conditions, loan defaults, and Sovereign's

imprudent investments, like the acquisition of Independence, that proved to be detrimental to the Company.

150. The revelation of Sovereign's fiscal fourth quarter 2007 disastrous earnings release made headlines in numerous financial publications, such as *The Associated Press* January 23, 2008 article entitled "Sovereign Bancorp 4Q Net Loss Widens Amid Loan Defaults and Eroding Value of Thrift It Bought," that reported that:

> Sovereign Bancorp. Inc. on Wednesday reported a 12-fold widening in its losses in the fourth quarter, as it recorded a massive write-down because customers defaulted on loans and the value of its investment in a New York thrift fell.
>
> The Philadelphia-based parent of Sovereign Bank also said it was suspending its quarterly stock dividend until further notice, a move that will reserve $160 million in capital this year.

151. On January 24, 2008, following Sovereign's announcement of its fiscal fourth quarter 2007 and full fiscal year 2007 losses, Sovereign's common stock plummeted to $10.09 from the previous trading day's close of $11.13. On the same day, Sovereign was downgraded by the prominent investment rating firm of Janney Montgomery Scott LLC from "Buy" to "Neutral." Subsequently, on February 13, 2008, Sovereign was also downgraded from "Hold" to "Sell by Sandler O'Neill & Partners, L.P., another highly regarded investment rating institution.

152. Sovereign further commented on the significant losses in its auto loans portfolio in the 2007 Form 10-K, stating that:

> During the second half of 2006, Sovereign expanded its indirect auto loan business in the Southeastern and Southwestern United States ("the Southeast and Southwest production offices"). When we decided to expand our auto loan business into the Southeast and Southwest, we expected to see higher levels of losses than what we had historically experienced for our auto loan business in our geographic footprint given that it was a new market and economic conditions were different in these markets as compared to the

Northeast. However, our pricing was adjusted to consider this expected difference in risk.

The Southeast and Southwest production offices experienced significant growth in auto loan balances in 2007 with auto loan originations of approximately $2.8 billion or 57% of our 2007 total auto loan originations. The average yield on these loan originations was 8.04% in 2007 compared to 7.61% on our originations within our geographic footprint. ***However, credit losses were significantly higher than our expectations and were the primary reasons for additional provisions for credit losses that were recorded in the second half of 2007***. Charge-offs on our auto portfolio totaled $76.2 million during 2007 compared to $30.5 million in 2006. However, 71% of our 2007 credit losses were recorded in the second half of the year. Additionally, more than half of these losses were related to the Southeast and Southwest production offices. At December 31, 2007, $2.6 billion of our auto loan portfolio consisted of loans originated in the Southeast and Southwest production offices.

In late December 2007, management decided to cease originating new loans in the Southeast and Southwest production offices effective January 31, 2008. ***Management also strengthened its underwriting standards in the third and fourth quarters of 2007 on its entire auto loan portfolio***. We believe these two decisions will lower loss rates in future periods; however losses are anticipated to remain at elevated levels during the first half of 2008 as the newly originated loans continue to season. We believe the additional provisions responds to the increased risk in our auto loan portfolio. However, deterioration in the economy of the regions where we extended these loans could have a significant adverse impact on the amount of credit losses we experience in 2008.

* * *

Our total allowance for credit losses as a percentage of total loans increased to 1.28% at December 31, 2007 compared to 0.88% at December 31, 2006. We believe the reserves we have established are adequate to provide for inherent losses in our portfolio at this time. ***Although the credit quality of our loan portfolio will most likely have the most significant impact on our financial performance in 2008, we believe the recent steps we have taken with regards to our auto loan portfolio will reduce the credit risk in our consumer portfolio***.

* * *

> Our Shared Services Consumer segment primarily consists of our residential real estate lending and auto lending businesses. The impairment in our Shared Services Consumer segment was impacted by the negative events in the fourth quarter surrounding our auto portfolio. ***In the third quarter of 2007, the annual loss run rate for our auto loans was $76.4 million or 116 points. During the fourth quarter losses for the auto loan portfolio increased significantly beyond what was expected with an annual loss run rate of $135.8 million or 206 basis points***. The majority of these losses related to loans originated in the Southeast and Southwest production offices. This led to our decision to cease originating loans from the Southeast and Southwest production offices effective January 31, 2008. (Emphasis added.)

153. Further, Sovereign noted in its 2007 Form 10-K that it:

> restructured our balance sheet, selling in excess of $8 billion of non-core assets… Included in these asset sales was $3.3 billion of under-performing correspondent non-prime home equity loans, which were sold during the fourth quarter of 2006 and first quarter of 2007 prior to a material collapse in the value of these assets, ultimately preserving hundreds of dollars in capital. We also shut down our out-of-footprint wholesale mortgage production offices during the same period and sold $2.9 billion of Alt-A residential mortgages. Again, the timing of this sale allowed us to avoid substantial market deterioration and further incremental write-downs. We most recently decided to exit the auto finance business in out-of-footprint markets in the Southeast and Southwest—after it became clear that the financial performance of this business in these markets was not meeting our expectations.

154. Additionally, Sovereign disclosed in its 2007 Form 8-K that during the Class Period, it had "off-balance sheet QSPEs [special purpose entities qualifying for non-consolidation] of $2.0 billion which Sovereign had accounted for as sales as of December 31, 2007." The use of "off-balance sheet" investments and other complex poorly-described investment vehicles prevented full and fair disclosure to the participants of the risks known to and assumed by Sovereign.

155. As Sovereign delayed creating adequate loan loss allowances, Plaintiffs and the other Class members do not know yet when the Company will have created loan loss allowances commensurate with the risks arising from its reduced underwriting standards and other risky practices it initiated earlier. Delaying the disclosure of its risky underwriting standards and its establishment of commensurate loan loss allowances had the effect of inflating the value of the Company stock.

156. On February 21, 2008, Sovereign announced the resignation/termination of McCollom effective March 3, 2008 continuing the market concern over the integrity of Sovereign's financial reporting, with shares of Sovereign falling 10.3% to $10.93 upon the news. Greg Moncroft, "CFO Shuffle at Sovereign Rattles Investors," *MarketWatch*, Feb. 22, 2008.

157. On April 21, 2008, *WSJ* published an expose regarding Sovereign entitled "Smaller Banks Begin to Pay Price For Their Boomtime Expansion," that detailed the rise and fall of the Company:

> Pennsylvania's Sovereign Bancorp grew in two decades from a tiny savings and loan into a regional bank with branches from New Hampshire to Maryland. Then in 2006, seeking faster growth, it drove all the way to Phoenix.
>
> Concentrating on auto loans, Sovereign offered some of the best terms around to car buyers in Arizona and eight other states far from Sovereign's home branches. "They came on like a tidal wave," says Steve Dancy, finance director at Mel Clayton Ford here. "It was a car dealer's dream."
>
> Now, two years after its expansion push, Sovereign has quit making auto loans outside the Northeast because too many borrowers fell behind on their bills. Losses on the bank's loans ballooned. In January, to conserve cash as it wrote off more bad loans, Sovereign eliminated dividend payments. On Tuesday, the bank is expected to announce a 40% drop in first-quarter earnings.
>
> Similar troubles are echoing through small and midsize banks across the U.S. In a bid to expand during the recent boom, many

set up operations in unfamiliar markets or started pitching new products. Others, aiming to stave off encroachment by huge U.S. financial institutions, boosted their lending by offering easy terms or lower rates. Now the slowing economy is exposing bad timing and blunders.

* * *

**Expanding With Ease**

Sovereign's push into auto lending underscores how easy it was for regional and small banks to expand when times were good.

Founded in 1902 as an S&L for textile workers in Wyomissing, a town in eastern Pennsylvania, Sovereign stayed close to home for more than a century.

Much of Sovereign's growth came after other banks went under during the S&L crisis. It bought two dozen banks between the late 1980s and 2006, extending its branch network into places like Martha's Vineyard, Mass., and Freehold, N.J. In 1999, it paid $1.4 billion to buy nearly 300 mid-Atlantic branches that were divested after the merger of Fleet Financial Group Inc. and BankBoston Corp.

As a result, Sovereign now has 750 branches in eight states, with nearly $85 billion in assets. Its marked value of about $4.4 billion is slight compared with Bank of America's $169 billion. The core of its business is traditional banking operations – taking deposits, making loans to small businesses and pitching mortgages.

Its auto-loan expansion was launched under Jay Sidhu, Sovereign's CEO since 1989. A bruising shareholder fight over the bank's performance led to Mr. Sidhu's ouster in late 2006. But Sovereign, attracted to strong economic growth in the Southeast and Southwest, continued Mr. Sidhu's push.

**First Foray**

In May 2006, Sovereign hired two senior auto-lending bankers from rival J.P. Morgan Chase & Co. to lead Sovereign's first foray beyond the Northeast. It poached loan representatives from niche auto lenders including WFS Financial Inc. and AmeriCredit Corp. With little name recognition and no retail bank branches, the company sent its representatives into dealerships in Arizona, Nevada, Colorado, Utah, Texas, Georgia, South Carolina, Virginia and Florida.

In Phoenix, Sovereign was a force to be reckoned with on Camelback Road, a central thoroughfare lined with more than a dozen auto dealerships. Sovereign representatives made sales calls at local showrooms, dealers say, armed with an 8 ½-by-11 sheet of "talking points" that boasted Sovereign's low rates, easy loan terms and same-or next-day funding.

Mr. Dancy, the finance director at the Mel Clayton Ford on the Camelback strip, says he already had relationships with banks including Chase, Wachovia and Wells Fargo & Co., so he initially hesitated to work with a new lender. But he changed his mind, he says, after attending a golf tournament in spring 2007. Other dealers there, he recalled, were raving that they were selling more cars, powered in part by Sovereign loans that were cheaper than those offered by other lenders.

Sovereign extended its best rates to buyers with credit scores above 700, say people familiar with the bank's strategy, while other banks typically started at scores of 730. (Credit scores generally range from 300 to 900). Dealers also pitched Sovereign loans at 9% interest to some buyers with 620 credit scores; other banks would typically offer 14% rates to customers with scores of around 640, turning down those with anything lower.

By the summer of 2007, Mr. Dancy says he was lining up more than 100 borrowers a month with Sovereign compared with 40 apiece with the area's traditional lenders. "Sovereign absolutely was the lowest in terms of rates and terms," says Mr. Dancy. "I'm going to do whatever it takes to move my inventory."

Jaime Licon, finance director at Ed Moses Dodge in Phoenix, says he sent so much business to Sovereign that he received complaints from Chrysler's LLC's in-house financing arm that it was being shunted aside. "If Sovereign had gotten here five years ago, they would have put a lot of banks out of business," Mr. Licon says.

Sovereign declined to comment on the specifics of its loan terms. But Thomas Nadeau, president of Sovereign's customer-lending operations, insists the bank didn't lower its standards to win business. "Our credit policies in these markets were consistent with those in our historic footprint," he says.

**The Wheels Fall Off**

> Last Fall, with subprime-mortgage delinquencies on the rise and a credit crunch setting in on Wall Street and beyond, the wheels started to fall off Sovereign's strategy. Delinquencies started to rise and the bank began seeing more first-payment defaults in its new Southeast markets. To stem those losses, it terminated relationships with about 90 dealers in the Southeast that had sold cars to many of those delinquent customers.
>
> By the year's end, Sovereign's auto-loan portfolio had grown to $7 billion, up from $4.9 billion in 2006, a rising share of its $57.8 billion in consumer and commercial loans. New markets accounted for more than half of the bank's new auto loans, as well as a majority of its losses on them. The bank wrote off $76.2 million in charges for auto loans, more than double its write-offs in 2006.
>
> In January, Sovereign announced it would end its auto-loan operation in the nine states, retreating to its core markets in the Northeast. It says it laid off about 40 representatives.
>
> "We are focusing our energy on auto lending within our core geographic footprint where we have a long heritage of profitable lending," said Joseph Campanelli, Sovereign's CEO. Like other banks, Sovereign says it is now tightening underwriting standards on car loans in those markets too.

158. Subsequently, Sovereign announced in its April 23, 2008 Form 8-K filing with the SEC that it failed to meet the analysts' estimates for its fiscal first-quarter of 2008, when it almost tripled its loan loss provisions to $135 million for the quarter.

159. On the same day, April 23, 2008, Moody's lowered Sovereign's credit rating two notches to "Baa2" from "A3" and said another cut may follow because the bank's earnings and capital ratios lag its peers. "Moody's Cuts Sovereign Ratings Two Notches," *Associated Press*, April 23, 2008.

160. The following month, on May 12, 2008, *TheStreet.com*, an online financial publication reported in an article entitled "Sovereign to Raise $1.5 Billion," that:

> [Sovereign] said it plans to raise roughly $1 billion through the sale of common stick, while a separate announcement said that it plans to offer as much as $500 million of subordinated notes due in 2018. …
>
> * * *
>
> Last week, Sovereign was rumored to be raising capital, as it struggles through the credit crisis and housing downturn.

161. On the same day, May 12, 2008, *The Forbes.com*, in an article entitled "Sovereign Reaches Out To Public," also reported that Sovereign was planning on raising capital in order to stay on float:

> Sovereign said Monday it will make a public offering of $1.0 billion shares worth of its common stock, and use the proceeds for "general corporate purposes." It has been reported that Sovereign is short on cash and needs additional liquidity to keep its operation running smoothly.
>
> Investors weren't excited about the dilutive effect that offering would have on Sovereign's shares. The Philadelphia-based bank fell 0.5%, or 4 cents, to $7.82, during morning trading in New York… Sovereign now has a market value of $4.0 billion, so the new issue represents about a quarter of its current equity.

162. Similarly, the *WSJ* reported the next day, May 13, 2008, in an article entitled "Sovereign plans to boost capital through offering of stock, notes," that:

> Sovereign Bancorp Inc. became the latest bank to visit the capital well, announcing plans to raise $1.5 billion through the sale of common stock and subordinated notes.
>
> The second-largest savings and loan in the U.S. after Washington Mutual Inc. has been hit by rising delinquencies and bad loans. Philadelphia-based Sovereign set aside $798 million to cover credit losses in the first quarter, citing growth in commercial loans and deterioration in its portfolio of commercial construction loans.

163. On May 20, 2008, Sovereign announced in its Form 8-K filing with the SEC, the completion of its equity and debt offerings, which raised a total of approximately $1.9 billion for Sovereign to bolster its financial structure.

164. Despite the infusion of new capital, Sovereign's stock has continued to drop and closed at $6.13 on July 14, 2008.

### B. Defendants Knew Or Should Have Known That Sovereign Stock Was Not A Prudent Plan Investment As A Result Of The Company's Highly Risky And Inappropriate Business Activities

165. At all relevant times, millions of dollars of Sovereign's assets were in danger of losing value due to the riskiness of the Company's investments and contingent liabilities. During the Class Period, Defendants knew or in the reasonable exercise of their fiduciary duties should have known that Sovereign stock was an imprudent investment for the Plan as a result of the Company's ill-considered acquisition of Independence; the failure to report on the Company's books its exposure to losses from its loan portfolios; the declining value of its Metro New York segment; the extent of its heavy investment in highly speculative and illiquid instruments; and the lack of appropriate internal controls to ensure the accuracy of the Company's financial reporting and estimates of its future financial performance.

166. Based on the facts described above, the Director Defendants had personal knowledge of, if not a direct role in, the Company's risky lending practices and misleading disclosures throughout the Class Period. Further, as a matter of law, Sovereign is imputed with the knowledge that Defendants had of the misconduct alleged herein.

167. Despite their knowledge of these undisclosed problems with Sovereign's loan portfolio and/or the failure to diligently and prudently investigate these problems and Sovereign's financial condition and reporting, Defendant fiduciaries continued to publicly proclaim the high

quality of Sovereign's loan portfolio, its sound financial condition and risk management, and continued to allow the Plan's fiduciaries to invest Plan assets in Sovereign Stock, and to offer it for investment by participants, to the detriment of Plan participants for whose accounts Sovereign common stock was purchased and held.

168. Plaintiffs allege that no Defendant conducted an appropriate investigation into whether Sovereign stock was a prudent investment for the Plan, even though as alleged *supra*, warning flags were raised throughout the Class Period sufficient to alert Defendants about the Company's ongoing improper lending practices, and despite the fact that the Plan held an enormous investment in Sovereign stock. Likewise, no Defendant provided the Plan participants with information regarding the true nature of Sovereign's subprime exposure and the risks such exposure presented to the Company, so that the Plan's participants could make informed decisions regarding the Plan's investment in Sovereign stock. Neither did any Defendant adequately review the performance of the other Plan fiduciaries to ensure they were fulfilling their fiduciary duties under the Plan and ERISA. Indeed, no Defendant took any meaningful action to protect the Plan against the risk of enormous losses stemming from the Company's massive subprime exposure and consequent artificial inflation of Sovereign stock. What action was taken was too little, and too late to prevent the Plan's massive losses.

169. Defendants failed to provide participants with information regarding *inter alia*, the risks posed to the Company by the acquisition of Independence, such as deteriorating balance sheets and impeded opportunity for stock buy-backs; Sovereign's ever-increasing exposure to losses from the rapidly deteriorating credit quality of its loan portfolio; the declining value of its Metro New York segment; and the Company's exposure to losses from its off-balance sheet assets. Because Defendants failed to provide this and other material information to Plan

participants, as reasonably prudent, impartial and unconflicted fiduciaries would have done, the Plan participants were never provided information material to their decisions regarding their selection of investment options in the Plan.

170. Among other deficiencies, Defendants also failed to reveal that they operated the Plan imprudently, including paying above market interest rates to the Company on the collateralized loan taken out for the ESOP portion of the Plan until its being frozen in 2007.

171. An adequate investigation by any Defendant would have revealed to a reasonable fiduciary that investment by the Plan in the Sovereign stock, under the circumstances described herein, was clearly imprudent. A prudent fiduciary acting under similar circumstances, would have acted to protect participants against unnecessary losses, and would have taken appropriate steps to protect the Plan from losses due to the Company's improper conduct.

172. Defendants had available a number of different options for satisfying their duty, including: a) making appropriate public disclosures as necessary; b) halting new investments in Sovereign stock; c) divesting the Plan of Sovereign stock; d) discontinuing further matching contributions in Sovereign stock; e) shifting the stock holdings in the Sovereign Common Stock Fund to cash pending an adequate investigation of Sovereign's misconduct; f) consulting independent advisors regarding appropriate measures to take in order to prudently and loyally serve the Plan participants; g) notifying appropriate federal agencies, such as the DOL, of problems affecting Plan investment in Sovereign stock; or h) resigning as Plan fiduciaries, to the extent that as a result of their employment by Sovereign they could not loyally serve the Plan participants in connection with the Plan's acquisition and holding of Sovereign stock. Defendants did not take any of these actions and, instead, stood idly by as the tremendous risks their fiduciary failures created, turned into tremendous losses of the Plan participants' retirement savings.

173. Nevertheless, Defendants did not take any action outlined in the preceding paragraph, in part, because Sovereign's compensation system for senior management and its corporate culture demanded unwaivering loyalty to Sovereign, its CEO, and the Company's interests. This system operated in direct conflict with the Defendant fiduciaries' duty to administer the Plan with an "eye single" to the interests of the Plan's participants regardless of the interests of individual fiduciaries. Consequently, Defendants continued to invest and allow investment of the Plan in Sovereign stock even though they knew or should have known during the Class Period that Sovereign faced substantial write-offs of its assets and resultant losses, leading to a devastating depreciation of its stock.

### C. Defendants Communicated With Plan Participants Concerning Purchases Of Sovereign Stock, Yet Failed To Disclose The Imprudence Of The Investment In The Stock

174. Upon information and belief, Defendants regularly communicated with employees, including the Plans' participants, about Sovereign's performance, future financial and business prospects, and Sovereign stock. These communications, directed specifically at the Plan participants, were disseminated through newsletters, the Plan documents, and other Plan related materials. Accordingly, the entities and/or persons responsible for these communications were ERISA fiduciaries in this regard.

175. As a consequence of these communications, the Company fostered an inaccurately rosy picture of the soundness of Sovereign stock as a Plan investment, and/or allowed the Plan participants to follow their natural bias towards investment in their employer's equity by not disclosing negative material information concerning investment in Sovereign stock. As such, the Plan participants could not appreciate the true risks presented by investments in

Sovereign stock and therefore could not make informed decisions regarding their investments in the Plan.

176. Despite Defendants' communications with participants regarding the Sovereign stock, Defendants failed to disclose the significance and the risks posed by the Company's acquisition of Independence, subprime exposure, and other improper business practices described above. Defendants knew or should have known that this information was likely to have an extreme impact on the Plan and the value of the Plan's assets. Moreover, Defendants knew or should have known certain basic facts about the characteristics and behavior of the Plan's participants, well-recognized in the 401(k) scholarly articles and trade press[4], concerning investment in company stock, including that:

a) employees tend to interpret a match in company stock as an endorsement of the company and its stock;

b) out of loyalty, employees tend to invest in company stock;

c) employees tend not to change their investment option allocations in the plan once made;

d) lower income employees tend to invest more heavily in company stock than more affluent workers, though they are at greater risk; and

e) Many employees do not recognize their exposure to massive loss from failing to diversify their investments:

Therefore, under ERISA, Defendants had an affirmative duty to disclose adverse information concerning Sovereign so that the Plan participants could make informed decisions regarding their

[4] *See, e.g.*, Joanne Sammer, *Managed Accounts: A new direction for 401(k) plans*, Journal of Accountancy, Vol. 204, No.2 (August 2007) (available at: http://www.aicpa.org/pubs/jofa/aug2007/sammer.htm); Bridgitte C. Mandrian and Dennis F. Shea, *The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior*, 116 Q.J. Econ. 4, 1149 (2001).

retirement investments. That duty however, was not fulfilled, as the Plan participants and beneficiaries remained in the dark regarding the Company's true state of affairs throughout the Class Period.

## THE RELEVANT LAW

177. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), provides, in pertinent part, that a civil action may be brought by a participant for relief under ERISA § 409, 29 U.S.C. § 1109.

178. ERISA § 409(a), 29 U.S.C. § 1109(a), "Liability for Breach of Fiduciary Duty," provides, in pertinent part, that any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be: personally liable to make good to such plan any losses to the plan resulting from each such breach; personally liable to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary; and subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

179. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes individual participants to seek equitable relief from Defendants, including, without limitation, injunctive relief and, as available under applicable law, constructive trust, restitution, and other monetary relief.

180. ERISA §§ 404(a)(1)(A) and (B), 29 U.S.C. §§ 1104(a)(1)(A) and (B), provide, in pertinent part, that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and their beneficiaries, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. These

fiduciary duties under ERISA §§ 404(a)(1)(A) and (B) are referred to as the duties of loyalty, exclusive purpose and prudence and are the "highest known to the law."

181. Plaintiffs therefore bring this action under the authority of ERISA § 502(a)(2) for relief to the Plan under ERISA § 409(a) to recover losses sustained by the Plan arising out of the breaches of fiduciary duties by the Defendants for violations under ERISA § 404(a)(1) and ERISA § 405(a). Insofar as any Defendant is sued alternatively as a knowing participant in a breach of fiduciary duty for equitable relief, Plaintiffs proceed pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

## ERISA § 404(c) DEFENSE IS INAPPLICABLE IN THIS ACTION

182. The Plan, Plaintiffs and the other Class members suffered losses because substantial assets in the Plan were invested in Citigroup stock during the Class Period in violation of the Defendants' fiduciary duties.

183. As to contributions invested in Company stock, Defendants were responsible for the prudence of investments provided under the Plan during the Class Period, unless the Plan satisfied the procedural and substantive requirements of ERISA § 404(c).

184. ERISA § 404(c) is an affirmative defense that provides a limited exception to fiduciary liability for losses that result from participants' exercise of control over investment decisions. In order for § 404(c) to apply, participants must in fact exercise "independent control" over investment decisions. In addition, § 404(c) only applies if participants are informed that "the Plan is intended to constitute a plan described in § 404(c) and [the regulations], and that fiduciaries of the plan may be relieved of liability for any losses which are the direct and necessary result of investment instructions given by such participants or beneficiaries." 29 C.F.R. § 2550.404c-1(b)(2)(B)(1)(i).

185. ERISA § 404(c) does not apply here for several reasons. First, ERISA § 404(c) does not and cannot provide any defense to the Plan fiduciaries' imprudent decision to select and continue offering Sovereign stock in the Plan, as that decision was made through the sole discretion of the Company. *See* Final Reg. Regarding Participant Directed Individual Account Plans (ERISA Section 404(c) Plans) ("Final 404(c) Reg."), 57 Fed. Reg. 46906-01, 1992 WL 277875, at *46924 n.27 (Oct. 13, 1992) (codified at 29 C.F.R. pt. 2550).

186. Second, even as to participant directed investment in Sovereign stock, ERISA § 404(c) does not apply because Defendants failed to ensure effective participant control by providing complete and accurate material information to participants regarding Sovereign stock. *See* 29 C.F.R. § 2550.404c-1(b)(2)(i)(B) (the participant must be provided with "sufficient information to make informed decisions"). As a consequence, the Plan participants did not exercise informed control over the portion of the Plan's assets that was invested in Sovereign stock, and the Defendants remained entirely responsible for losses that resulted from such investments.

187. Lastly, any portion of the Plan deemed to be an ESOP does not fall within the scope of protection offered by ERISA § 404(c), as the Secretary of Labor has interpreted this provision to apply only to a plan that provides plan participants with a range of investment options, which an ESOP by its very nature does not. *See* 29 C.F.R. § 2550.404c-1 (1996).

188. Because ERISA § 404(c) does not apply here, the Defendants' liability to the Plan, Plaintiffs, and the other Class members for losses caused by the Plan's investment in Sovereign stock is established upon proof that such investments were or became imprudent and resulted in losses in the value of the Plan's assets during the Class Period.

## CAUSES OF ACTION

## COUNT I

***Failure to Prudently and Loyally Manage the Plan and Plan Assets***

***(Breaches of Fiduciary Duties in Violation of ERISA § 404 by All Defendants)***

189. Plaintiffs incorporate by this reference the allegations contained in the previous paragraphs.

190. As alleged above, during the Class Period, Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

191. As alleged above, Defendants' fiduciary duties and responsibilities included managing the Plan's assets for the sole and exclusive benefit of the Plan's participants and beneficiaries with the care, skill, diligence, and prudence required by ERISA. Accordingly, Defendants were directly responsible for, *inter alia*, selecting prudent investment options for the Plan, eliminating imprudent options, evaluating the merits of the Plan's investments on an ongoing basis, and taking all necessary steps to ensure that Plan's assets were invested prudently and complied with the Plan's purpose of helping participants save for retirement.

192. Yet, contrary to their duties and obligations under the Plan's documents and ERISA, Defendants failed loyally and prudently to manage the assets of the Plan. Specifically, throughout the Class Period, Defendants caused the Plan to pay above market interest rates to the Company on the collateralized loan taken out for the ESOP portion of the Plan until its being frozen in 2007. Further, at all relevant times, Defendants knew or should have known that Sovereign stock no longer was a suitable investment for the Plan, but was, instead, a highly

speculative, artificially inflated, and risky investment in light of the Sovereign's acquisition of Independence and the Company's perilous operations tied to the subprime securities market.

193. Nonetheless, during the Class Period, Defendants continued to offer Sovereign stock as an investment option for the Plan. They did so despite evidence that the Company was being seriously mismanaged, was engaged in highly risky business practices, and was issuing misleading and inaccurate financial statements to the SEC, the investing public, and the Plan's participants and beneficiaries that artificially inflated the value of the stock and exposed the Plan to massive losses.

194. As stated *supra*, Defendants were obliged prudently and loyally to manage all of the Plan's assets. Compliance with their duties of prudence and loyalty was especially critical with respect to Sovereign stock because: a) during the Class Period, a large portion of the Plan's assets was invested in it; b) company stock is a particularly risky and volatile investment, even in the absence of company misconduct; and c) participants tend to underestimate the likely risk and overestimate the likely return of investment in company stock investment. In view of this, Defendants were obliged to have in place a regular, systematic procedure for evaluating the prudence of Sovereign stock.

195. Instead, Defendants failed to conduct an appropriate investigation of the merits of continued investment in Sovereign stock even in light of the Company's highly risky business practices and the particular dangers that these practices posed to the Plan. Such an investigation would have revealed to a reasonably prudent fiduciary the imprudence of continuing to make and maintain investment in Sovereign stock under these circumstances.

196. Defendants abused their discretion and authority under ERISA by allowing the Plan to maintain investment in Sovereign stock. Specifically, based on the above, a prudent

fiduciary could not have reasonably believed that further and continued investment of the Plan's contributions and assets in Sovereign stock was in keeping with the Plan settlor's expectations of how a prudent fiduciary would operate.

197. According to the DOL regulations and case law interpreting ERISA § 404, a fiduciary's investment or investment course of action is prudent if he or she: a) has given appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties; and b) has acted accordingly.

198. Again, according to DOL regulations, "appropriate consideration" in this context includes, but is not necessarily limited to:

- A determination by the fiduciary that the particular investment or investment course of action is reasonably designed, as part of the portfolio (or, where applicable, that portion of the plan portfolio with respect to which the fiduciary has investment duties), to further the purposes of the plan, taking into consideration the risk of loss and the opportunity for gain (or other return) associated with the investment or investment course of action; and
- Consideration of the following factors as they relate to such portion of the portfolio:
  - The composition of the portfolio with regard to diversification;
  - The liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the plan; and

- o The projected return of the portfolio relative to the funding objectives of the plan.

199. Given the conduct of the Company as described above, Defendants could not possibly have acted prudently when they continued to invest the Plan's assets in Sovereign stock because, among other reasons:

- Defendants knew of and/or failed to investigate the serious corporate misconduct occurring at the Company that made Sovereign stock an extremely risky, artificially inflated, and imprudent investment for the Plan;
- The risk associated with the investment in Sovereign's stock during the Class Period was an extraordinary risk, far above and beyond the normal, acceptable risk associated with investment in company stock;
- This abnormal investment risk could not have been known by the Plan participants, and Defendants were aware or should have been aware that it was unknown to them (as it was to the market generally), because the fiduciaries never disclosed it;
- Knowing of this extraordinary risk, and knowing the participants were not aware of it, Defendants had a duty to avoid permitting the Plan or any participant from investing Plan assets in Sovereign stock; and
- Further, knowing that the Plan was heavily invested in Company stock, Defendants had a heightened responsibility to divest the Plan of Company stock if it became or remained imprudent.

200. Moreover, a fiduciary's duties of loyalty and prudence require it to disregard plan documents or directives that it knows or reasonably should know would lead to an imprudent result or would otherwise harm plan participants or beneficiaries. ERISA § 404(a)(1)(D), 29

U.S.C. § 1104(a)(1)(D). Thus, a fiduciary may not blindly follow plan documents or directives that would lead to an imprudent result or that would harm plan participants or beneficiaries, nor allow others, including those whom they direct or who are directed by the plan, to do so.

201. Defendants breached this duty by (1) continuing to offer Sovereign stock as an investment option for the Plan; and (2) continuing to invest the assets of the Sovereign Common Stock Fund overwhelmingly in Sovereign stock rather than in cash or other short-term investment options, when Defendants knew or should have known that Sovereign stock no longer was a prudent investment for participants' retirement savings.

202. As a consequence of Defendants' breaches of fiduciary duty alleged in this Count, the Plans suffered tremendous losses. Investment in Sovereign stock during the Class Period clearly did not serve the Plan's purpose of helping participants save for retirement, and in fact caused significant losses to the participants' retirement savings. During the Class Period, despite their knowledge of the imprudence of the investment, Defendants failed to take any meaningful steps to protect the Plan's participants from the inevitable losses Defendants knew would ensue as the non-disclosed material problems with Sovereign's business related to its acquisition of Independence and its subprime loan operations took hold and became public. Had Defendants discharged their fiduciary duties to prudently invest the Plan's assets, the losses suffered by the Plans would have been minimized or avoided. Therefore, as a direct and proximate result of the breaches of fiduciary duty alleged herein, the Plan participants and beneficiaries, lost a significant amount of their retirement savings.

203. Pursuant to ERISA §§ 409 and 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a) and 1132(a)(2) and (a)(3), Defendants are liable to restore the losses to the Plan caused by their

breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

## COUNT II

### *Failure to Provide Complete and Accurate Information to Participants and Beneficiaries*

***(Breaches of Fiduciary Duties in Violation of ERISA §§ 404 and 405 by All Defendants)***

204. Plaintiffs incorporate by this reference the allegations contained in the previous paragraphs.

205. As alleged above, during the Class Period, all Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

206. As alleged above, during the Class Period, the scope of Defendants' fiduciary responsibilities included disseminating Plan documents and/or Plan-related information to participants regarding the Plan and/or assets of the Plan.

207. Defendants, as Plan fiduciaries, are required under ERISA to speak truthfully to participants, not to mislead them regarding the Plan or the Plan's assets, and to disclose information that participants need in order to exercise their rights and interests under the Plan. This duty to inform participants includes an obligation to provide participants and beneficiaries of the Plan with complete and accurate information, and to refrain from providing false information or concealing material information regarding the Plan's investment options, such that participants can make informed decisions with regard to the prudence of investing in such options available under the Plan. This duty applies to all Plan investment options, including investment in Sovereign stock.

208. This fiduciary duty to honestly communicate with participants is designed not merely to inform participants and beneficiaries of misconduct bearing on their retirement savings, but also to forestall such misconduct in the first instance. By failing to discharge their disclosure duties, Defendants facilitated the misconduct in the first instance.

209. Defendants were obliged to provide participants with complete and accurate information concerning all of the Plan's assets. However, their duties of honest disclosure were especially significant with respect to Sovereign stock because: a) during the Class Period, a large portion of the Plan's assets was invested in it; b) company stock is a particularly risky and volatile investment, even in the absence of company misconduct; and c) participants tend to underestimate the likely risk and overestimate the likely return of investment in company stock investment.

210. Defendants breached their ERISA duty to inform participants by failing to provide complete and accurate information regarding the Company and Sovereign stock, and, generally, by conveying inaccurate information regarding the soundness of Sovereign stock, and the prudence of investing retirement contributions in the stock. Specifically, the Defendants failed to adequately inform participants of the true nature of the Company's involvement in subprime lending, other improper business practices, and the risks these presented for the Company. Defendants also failed to inform participants that the Company's disclosures regarding its improper activities were false and misleading, and caused the value of Sovereign stock to be artificially inflated.

211. As a consequence of Defendants' failure to satisfy their duty to provide complete and accurate information under ERISA, the Plan participants lacked sufficient information to make informed choices regarding investment of their retirement savings in Sovereign stock, or to appreciate that under the circumstances known or that should have been known to the Defendants,

Sovereign stock was an inherently unsuitable and inappropriate investment option for their accounts. Furthermore, as the investors, including the Plan participants were deprived of crucial, material information regarding the risks of Sovereign stock as an investment option, all of the Plan's acquisitions of Company stock during the Class Period occurred at inflated prices.

212. Where a breach of fiduciary duty consists of, or includes, misrepresentations and omissions material to a decision by a reasonable plan participant that results in harm to the participant, the participant is presumed as a matter of law to have relied upon such misrepresentations and omissions to his or her detriment. Here, the above-described statements, acts and omissions of the Defendants in this Count constituted misrepresentations and omissions that were fundamentally deceptive concerning the prudence of investments in Sovereign stock and were material to any reasonable person's decision about whether or not to invest or maintain any part of their retirement assets in Sovereign stock during the Class Period. Plaintiffs and the other Class members are therefore presumed to have relied to their detriment on the misleading statements, acts, and omissions of Defendants named in this Count.

213. As a consequence of the Defendants' breaches of fiduciary duty, the Plan suffered tremendous losses. Had Defendants discharged their fiduciary duties to prudently disclose material information, the losses suffered by the Plan would have been minimized or avoided. Therefore, as a direct and proximate result of the breaches of fiduciary duty alleged herein, the Plan participants and beneficiaries lost a significant portion of their retirement savings.

214. Pursuant to ERISA §§ 409 and 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a) and 1132(a)(2) and (a)(3), Defendants are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

**COUNT III**

***Failure to Monitor Fiduciaries***

***(Breaches of Fiduciary Duties in Violation of ERISA § 404 by Sovereign, the Director Defendants, the Compensation Committee and the Retirement Committee)***

215. Plaintiffs incorporate by this reference the allegations contained in the previous paragraphs.

216. This Count alleges fiduciary breach against the following Defendants: Sovereign, the Director Defendants, the Compensation Committee and the Retirement Committee (the "Monitoring Defendants").

217. As alleged above, during the Class Period the Monitoring Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

218. As alleged above, the scope of the fiduciary responsibilities of the Monitoring Defendants included the responsibility to appoint, and remove, and thus, monitor the performance of other Plan fiduciaries.

219. Under ERISA, a monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment and holding of plan assets, and must take prompt and effective action to protect the plan and participants when they are not.

220. The monitoring duty further requires that appointing fiduciaries have procedures in place so that on an ongoing basis they may review and evaluate whether the "hands-on" fiduciaries are doing an adequate job (for example, by requiring periodic reports on their work and the plan's performance, and by ensuring that they have a prudent process for obtaining the information and resources they need). In the absence of a sensible process for monitoring their

appointees, the appointing fiduciaries would have no basis for prudently concluding that their appointees were faithfully and effectively performing their obligations to plan participants or for deciding whether to retain or remove them.

221. Furthermore, a monitoring fiduciary must provide the monitored fiduciaries with complete and accurate information in their possession that they know or reasonably should know that the monitored fiduciaries must have in order to prudently manage the plan and the plan assets, or that may have an extreme impact on the plan and the fiduciaries' investment decisions regarding the plan.

222. The Monitoring Defendants breached their fiduciary monitoring duties by, among other things: (a) failing, at least with respect to the Plan's investment in Sovereign stock, to monitor their appointees, to evaluate their performance, or to have any system in place for doing so, and standing idly by as the Plan suffered enormous losses; (b) failing to ensure that the monitored fiduciaries appreciated the true extent of Sovereign's highly risky and inappropriate business practices, and the likely impact of such practices on the value of the Plan's investment in its stock; (c) to the extent any appointee lacked such information, failing to provide complete and accurate information to all of their appointees, such that they could make sufficiently informed fiduciary decisions with respect to the Plan's assets; and (d) failing to remove appointees whose performance was inadequate in that they continued to make and maintain huge investments in Sovereign stock despite their knowledge of practices that rendered Sovereign stock an imprudent investment during the Class Period for participants' retirement savings in the Plan.

223. As a consequence of the Monitoring Defendants' breaches of fiduciary duty, the Plan suffered tremendous losses. If the Monitoring Defendants had discharged their fiduciary monitoring duties as described above, the losses suffered by the Plan would have been minimized

or avoided. Therefore, as a direct and proximate result of the breaches of fiduciary duty alleged herein, the Plan participants and beneficiaries lost a significant portion of their retirement savings.

224. Pursuant to ERISA §§ 409 and 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a) and 1132(a)(2) and (a)(3), the Monitoring Defendants are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

## COUNT IV

### *Prohibited Transaction*

### *(Breaches of Fiduciary Duties in Violation of ERISA §§ 406 and 408 by Sovereign, the Director Defendants, the Compensation Committee and the Retirement Committee)*

225. Plaintiffs incorporate by this reference the allegations contained in the previous paragraphs.

226. This Count alleges fiduciary breach against the following Defendants: Sovereign, the Director Defendants, the Compensation Committee and the Retirement Committee.

227. ERISA § 406(a)(1)(B) prohibits the lending of money or other extension of credit between the Plan and a party in interest.

228. Further, ESOP loans are permissible if they are made "at interest rate which is not in excess of a reasonable rate." § 408(b)(3)(B).

229. Causing the Plan to pay above reasonable market rate interest on the collateralized loan taken out for the ESOP portion of the Plan, until its being frozen in 2007, constituted a prohibited transaction by the Defendants named in this Count, and caused losses to the Plan and its participants and beneficiaries, for which appropriate relief should be granted.

## COUNT V

***Breach of Duty to Avoid Conflicts of Interest***

***(Breaches of Fiduciary Duties in Violation of ERISA §§ 404 and 405 by All Defendants)***

230. Plaintiffs incorporate by this reference the allegations contained in the previous paragraphs.

231. At all relevant times, as alleged above, all Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

232. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), imposes on a plan fiduciary a duty of loyalty, that is, a duty to discharge his/her duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and its beneficiaries.

233. The fiduciary duty of loyalty entails, among other things, a duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with single-minded devotion to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor. On information and belief, the compensation and tenure of Defendants were tied to the performance of Sovereign stock and/or the publicly reported financial performance of Sovereign. Further, on information and belief, Defendants were issued numerous loans by the Company, amounting to millions of dollars. Fiduciaries laboring under such conflicts, must, in order to comply with the duty of loyalty, make special efforts to assure that their decision making process is untainted by the conflict and made in a disinterested fashion, typically by seeking independent financial and legal advice obtained only on behalf of the Plan.

234. Defendants breached their duty to avoid conflicts of interest and to promptly resolve them by, *inter alia*: failing to engage independent advisors who could make independent judgments concerning the Plan's investment in the Sovereign Common Stock Fund; failing to notify appropriate federal agencies, including the DOL, of the facts and transactions which made Sovereign stock an unsuitable investment for the Plan; failing to take such other steps as were necessary to ensure that participants' interests were loyally and prudently served; with respect to each of these above failures, doing so in order to prevent drawing attention to the Company's inappropriate practices; and by otherwise placing the interests of the Company, their co-defendants, and themselves above the interests of the participants with respect to the Plan's investment in Sovereign stock. Therefore, as a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plan's participants and beneficiaries, lost a significant portion of their retirement investments.

235. Pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) and ERISA § 409, 29 U.S.C. § 1109(a), Defendants named in this Count are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Count.

## COUNT VI

### *Co-Fiduciary Liability*

***(Breaches of Fiduciary Duties in Violation of ERISA §§ 404 and 405 by Sovereign, the Director Defendants, the Compensation Committee and the Retirement Committee)***

236. Plaintiffs incorporate by this reference the allegations contained in the previous paragraphs.

237. This Count alleges co-fiduciary liability against the following Defendants: Sovereign, the Director Defendants, the Compensation Committee and the Retirement Committee (the "Co-Fiduciary Defendants").

238. As alleged above, during the Class Period the Co-Fiduciary Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

239. As alleged above, ERISA § 405(a), 29 U.S.C. § 1105, imposes liability on a fiduciary, in addition to any liability which he may have under any other provision, for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if knows of a breach and fails to remedy it, knowingly participates in a breach, or enables a breach. The Co-Fiduciary Defendants breached all three provisions.

240. Knowledge of a Breach and Failure to Remedy: ERISA § 405(a)(3), 29 U.S.C. § 1105, imposes co-fiduciary liability on a fiduciary for a fiduciary breach by another fiduciary if, it has knowledge of a breach by such other fiduciary, unless it makes reasonable efforts under the circumstances to remedy the breach. Sovereign, the Director Defendants, the Compensation Committee, and the Retirement Committee knew of the breaches by the other fiduciaries and made no efforts, much less reasonable ones, to remedy those breaches. In particular, they did not communicate their knowledge of the Company's improper business activities to the other fiduciaries.

241. Sovereign, through its officers and employees, engaged in highly risky and inappropriate business practices, withheld material information from the market, provided the market with misleading disclosures, and profited from such practices, and, thus, knowledge of such practices is imputed to Sovereign as a matter of law.

242. The Director Defendants, by virtue of their positions at Sovereign, participated in and/or knew about the Company's highly risky and inappropriate business practices, and their consequences, including the artificial inflation of the value of Sovereign stock.

243. Similarly, the Compensation and Retirement Committees, through their members, participated in and/or knew about the Company's improper business activities and the impact of such activities on the value of Sovereign stock.

244. Because Sovereign, the Director Defendants, and the Compensation and Retirement Committees knew of the Company's improper business practices, they also knew that the other Defendants were breaching their duties by (i) continuing to invest the Plan in Company stock; and (ii) providing incomplete and inaccurate information to Plan participants. Yet, they failed to undertake any effort to remedy these breaches. Instead, they compounded them by downplaying the significance of Sovereign's exposure to leveraged financing, and obfuscating the risk that the Company's investment practices posed to Sovereign, and, thus, to the Plan.

245. Knowing Participation in a Breach: ERISA § 405(a)(1), 29 U.S.C. § 1105(1), imposes liability on a fiduciary for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if he or she participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach. Sovereign knowingly participated in the fiduciary breaches of the other Defendants in that it benefited from the sale or contribution of its stock at artificially inflated prices. Sovereign also, as a *de facto* fiduciary, participated in all aspects of the fiduciary breaches of the other Defendants. Likewise, the Director Defendants as well as the Compensation and Retirement Committees (through their members) knowingly participated in the breaches of the other Defendants because,

as alleged above, they had actual knowledge of the Company's misconduct and yet, ignoring their oversight responsibilities, permitted the other Defendants to breach their duties.

246. Enabling a Breach: ERISA § 405(a)(2), 29 U.S.C. § 1105(2), imposes liability on a fiduciary if by failing to comply with ERISA § 404(a)(1), 29 U.S.C. §1104(a)(1), in the administration of his or her specific responsibilities which give rise to his status as a fiduciary, he or she has enabled another fiduciary to commit a breach.

247. The Co-Fiduciary Defendants' failure to monitor the other fiduciaries of the Plan enabled those fiduciaries to breach their duties.

248. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plan's participants and beneficiaries, lost a significant portion of their retirement savings.

249. Pursuant to ERISA §§ 409 and 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a) and 1132(a)(2) and (a)(3), the Co-Fiduciary Defendants are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

## CAUSATION

250. The Plan suffered millions of dollars in losses because significant Plan assets were imprudently invested or allowed to be invested by Defendants in Sovereign stock during the Class Period, in breach of Defendants' fiduciary duties. At all relevant times, the price of Sovereign stock was artificially inflated due to the misconduct alleged herein. Yet, throughout the Class Period, Defendants both allocated the artificially inflated Sovereign shares to Plan participants' ESOP holdings, and made it available as an investment option under the 401(k) portion of the Plan. Thus, the Plan's losses that occurred when Defendants' wrongdoing came to light, resulted in the diminished account balances of the Plan's participants.

251. To properly discharge their fiduciary duties and thereby safeguard the participants' retirement savings, Defendants were mandated to take a number of steps, including but not limited to (i) eliminating or reducing the amount of Sovereign stock held by the Plan when maintaining such an investment became imprudent, and (ii) providing full and accurate disclosure to the Plan participants of material adverse facts concerning investment in Sovereign stock. Had these measures been properly and timely undertaken by Defendants, the Plan, Plaintiffs, and the other Class members would have avoided some or all of the losses they suffered through the continued imprudent investment of the Plan in Company stock.

252. Instead, Defendants withheld material, non-public facts from participants, and provided inaccurate and incomplete information to them regarding the true health and ongoing profitability of Sovereign, and its soundness as an investment vehicle. As a consequence, the Plan participants did not exercise independent control over their investments in Sovereign stock, and Defendants are liable under ERISA for losses caused by such investments.

253. Had Defendants properly discharged their fiduciary duties, including the provision of full and accurate disclosure of material facts concerning investment in Sovereign stock, eliminating Sovereign stock as the primary investment alternative when it became imprudent, and divesting the Plan of its holdings of Sovereign stock when maintaining such an investment became imprudent, the Plan would have avoided a substantial portion of the losses that it suffered through its continued investment in Sovereign stock.

254. The losses suffered by the Plan and its participants and beneficiaries, were the direct result of the Defendants' misconduct alleged herein. Defendants are liable for the Plan's losses because they failed to undertake the necessary measures to ensure effective and informed

participant control over the investment decision-making process, as required by ERISA § 404(c), 29 U.S.C. § 1104(c), and the regulations promulgated thereunder.

**REMEDIES FOR DEFENDANTS' BREACHES OF FIDUCIARY DUTIES**

255. Defendants breached their fiduciary duties in that they knew or should have known the facts as alleged above, and therefore knew or should have known that the assets of the Plan should not have been heavily invested in Sovereign equity during the Class Period.

256. As a consequence of the Defendants' breaches, the Plan suffered significant losses.

257. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) authorizes a plan participant to bring a civil action for appropriate relief under ERISA § 409, 29 U.S.C. § 1109. Section 409 requires "any person who is a fiduciary…who breaches any of the…duties imposed upon fiduciaries…to make good to such plan any losses to the plan…." Section 409 also authorizes "such other equitable or remedial relief as the court may deem appropriate."

258. With respect to calculation of the losses to the Plan, breaches of fiduciary duty result in a presumption that, but for the breaches of fiduciary duty, the Plan would not have made or maintained its investments in the challenged investment and, where alternative investments wee available, the investments made or maintained in Sovereign stock should have instead been made in the most profitable alternative investment available. In this way, the remedy restores the Plan's lost value and puts the participants in the position they would have been in if the Plan had been properly administered.

259. The Plan, Plaintiffs, and the other Class members are therefore entitled to relief from the Defendants in the form of: (1) a monetary payment to the Plan to make good to the Plan the losses to the Plan resulting from the breaches of fiduciary duties alleged above in an amount

to be proven at trial based on the principles described above, as provided by ERISA § 409(a), 29 U.S.C. § 1109(a); (2) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by ERISA §§ 409(a) and 502(a), 29 U.S.C. §§ 1109(a) and 1132(a); (3) reasonable attorney fees and expenses, as provided by ERISA § 502(g), 29 U.S.C. § 1132(g), the common fund doctrine, and other applicable law; (4) taxable costs and interests on these amounts, as provided by law; and (5) such other legal or equitable relief as may be just and proper.

260. Under ERISA, each Defendant is jointly and severally liable for the losses suffered by the Plan in this case.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

A. A declaration that the Defendants, and each of them, have breached their ERISA fiduciary duties to the Plan and its participants and beneficiaries;

B. A declaration that the Defendants, and each of them, are not entitled to the protection of ERISA § 404(c)(1)(B), 29 U.S.C. § 1104(c)(1)(B);

C. An order compelling the Defendants to make good to the Plan all losses to the Plan resulting from Defendants' breaches of their fiduciary duties, including losses to the Plan resulting from imprudent investment of the Plan's assets, to restore to the Plan all profits the Defendants made through use of the Plan's assets, and to restore to the Plan all profits which the participants would have made if the Defendants had fulfilled their fiduciary obligations;

D. Imposition of a constructive trust on any amounts by which any Defendant was unjustly enriched at the expense of the Plan as the result of breaches of fiduciary duty;

E. An Order enjoining Defendants, and each of them, from any further violations of their ERISA fiduciary obligations;

F. Actual damages in the amount of any losses the Plan suffered, to be allocated among the participants' individual accounts in proportion to the accounts' losses;

G. An order that Defendants allocate the Plan's recoveries to the accounts of all participants who had their account balances invested in the common stock of Sovereign maintained by the Plan, in proportion to the accounts' losses;

H. An order awarding costs pursuant to 29 U.S.C. § 1132(g);

I. An order awarding attorneys' fees pursuant to 29 U.S.C. § 1132(g) and the common fund doctrine; and

J. An order for equitable restitution and other appropriate equitable and injunctive relief against the Defendants, including appropriate modifications to the Plan to ensure against further violations of ERISA.

Dated: July 23, 2008

Respectfully submitted,

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