UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

EMANUEL SCHMALZ, on Behalf of All Others Similarly Situated, **Plaintiff,** **-against-** **SOVEREIGN BANCORP, INC., JOSEPH P. CAMPANELLI, MARK R. MCCOLLOM, P. MICHAEL EHLERMAN, BRIAN HARD, MARIAN L. HEARD, GONZALO DE LAS HERAS, ANDREW C. HOVE, JR., JUAN RODRIGUEZ INCIARTE, WILLIAM J. MORAN, MARIA FIORINI RAMIREZ, ALBERTO SANCHEZ, CAMERON C. TROILO, SR., RALPH V. WHITWORTH, RETIREMENT SAVINGS PLAN COMMITTEE OF SOVEREIGN BANCORP, INC. and COMPENSATION COMMITTEE OF SOVEREIGN BANCORP, INC.,** **Defendants.**	**Civil Action No.: ________________** **CLASS ACTION COMPLAINT FOR VIOLATIONS OF ERISA**

Plaintiff Emanuel Schmalz ("Plaintiff"), 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 (the "Participants"), by his attorneys, alleges the following for his Complaint ("Complaint"):

INTRODUCTION

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

2. Retirement plans confer tax benefits on participating employees to incentivize saving for retirement and/or other long-term goals. An employee participating in an employee

pension benefit plan may have the option of purchasing/acquiring the common stock of his/her employer, often the sponsor of the plan, for part of his/her retirement investment portfolio. Here, Sovereign common stock is the principle common stock investment alternative of the Plan.

3. Plaintiff was an employee of Sovereign and is a participant in the Plan. Plaintiff's retirement investment portfolio includes Sovereign common stock.

4. Plaintiff alleges that Defendants, as fiduciaries of the Plan, breached their duties to him and to the other Plan participants in violation of ERISA, particularly with regard to the Plan's holdings of Sovereign stock.

5. During the Class Period (as defined below), Defendants knew or should have known that Sovereign stock was an imprudent investment alternative for the Plan. Defendants had intimate knowledge of, and an active role in, the improper financing activities of the Company that allowed Sovereign to artificially inflate and manipulate the Company's earnings.

6. This action is brought on behalf of the Plan and seeks 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)), Plaintiff seeks other equitable relief from Defendants, including, without limitation, injunctive relief and, as available under applicable law, constructive trust, restitution, and other monetary relief.

7. Because Plaintiff's claims apply to the participants and beneficiaries of the Plan as a whole, and because ERISA authorizes participants such as Plaintiff to sue for breaches of fiduciary duty on behalf of the Plan, Plaintiff brings this as a class action on behalf of all Plan participants during the Class Period.

JURISDICTION AND VENUE

8. 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).

9. 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.

10. 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. Plaintiff

11. Plaintiff was an employee of Sovereign at all relevant times. During the Class Period, Plaintiff was, and continues to be, a participant or beneficiary of the Plan, within the meaning of ERISA §§ 3(7) and 502(a), 29 U.S.C. §§ 1002(7) and 1132(a), and Sovereign stock was purchased or maintained on his behalf by means of the Plan in the Sovereign Stock Fund.

B. Defendants

Sovereign Defendants

12. Defendant Sovereign is a Pennsylvania corporation, with offices located 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 with the United States Securities and Exchange Commission ("SEC") for the year ended December 31, 2006. ("2006 Form 11-K").

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 and employees, including their Plan-related activities. Through its Board of Directors (the "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.

16. Additionally, by failing to properly discharge their fiduciary duties under ERISA, the officer, director, and employee fiduciaries breached duties they owed to the Plan participants. Accordingly, the actions of the Plan's officers, directors, and other employee fiduciaries are imputed to Sovereign under the doctrine of *respondeat superior*, and Sovereign is liable for these actions.

17. Defendant Joseph P. Campanelli ("Campanelli") was, at all relevant times, Chief Executive Officer, President and a director of Sovereign. Campanelli signed Sovereign's relevant SEC filings during the Class Period, participated in the day-to-day management and overall

direction of the Company, participated in the preparation of the statements alleged herein to be false, and communicated both directly and indirectly with Plan participants. Campanelli was privy to confidential proprietary information concerning Sovereign and its business, operations, products, growth, financial statements, and financial condition.

18. Defendant Mark R. McCollom ("McCollom") was, at all relevant times, Chief Financial Officer of Sovereign. McCollom signed Sovereign's relevant SEC filings during the Class Period, participated in the day-to-day management and overall direction of the Company, participated in the preparation of the statements alleged herein to be false, and communicated both directly and indirectly with Plan participants. McCollom was privy to confidential proprietary information concerning Sovereign and its business, operations, products, growth, financial statements, and financial condition.

Director Defendants

19. Defendants Campanelli, P. Michael Ehlerman ("Ehlerman"), Brian Hard ("Hard"), Marian L. Heard ("Heard"), Gonzalo de Las Heras ("Heras"), Andrew C. Hove, Jr. ("Hove"), Juan Rodriguez Inciarte ("Inciarte"), William J. Moran ("Moran"), Maria Fiorini Ramirez ("Ramirez"), Alberto Sanchez ("Sanchez"), Cameron C. Troilo, Sr. ("Troilo") and Ralph V. Whitworth ("Whitworth") served as members of the Board at all relevant times (the "Director Defendants").

20. 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, conversations 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.

21. 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.

22. 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; and/or (ii) the management and disposition of the Plan's assets; and/or (iii) appointing, monitoring, and removing the Plan's fiduciaries.

Compensation Committee Defendants

23. Defendant Ehlerman, in addition to being the Chariman of the Board, has served as the Chairman of the Compensation Committee of the Board (the "Compensation Committee"), at all relevant times. As such, Defendant Ehlerman was a fiduciary of the Plan within the meaning of ERISA in that he exercised discretionary authority with respect to management and administration of the Plan and/or management and disposition of the Plan's assets.

24. Defendants Hard, Heras, Hove, Moran and Whitworth, in addition to being members of the Board, have served as members of the Compensation Committee, at all relevant times, and as such were fiduciaries of the Plan within the meaning of ERISA, in that they exercised discretionary authority with respect to management and administration of the Plan and/or management and disposition of the Plan's assets.

25. In addition to the Board collectively, the Compensation Committee, upon information and belief, is also a fiduciary of the Plan. According to Sovereign's Schedule 14A, filed with the SEC on April 3, 2007, the Compensation Committee is 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 therein are fiduciaries of the Plan within the meaning of ERISA in that they exercise discretionary authority with respect to management and administration of the Plan and/or management and disposition of the Plan's assets. Further, each member of the Compensation Committee, by virtue of their committee position, was a member of the Board and therefore also had fiduciary responsibility to the Plan and its participants in that regard.

Retirement Savings Plan Committee Defendants

26. Defendant Troilo in addition to being a Board member, has served as the Chairman of the Retirement Committee, at all relevant times. As such, Defendant Troilo was a fiduciary of the Plan within the meaning of ERISA in that he exercised discretionary authority with respect to management and administration of the Plan and/or management and disposition of the Plan's assets, and/or appointing, monitoring and removing the Plan's fiduciaries.

27. Defendants Ehlerman, Heras, Hard, Heard, and Inciarte, at all relevant times, served as members of the Retirement Committee and as such, were fiduciaries of the Plan within the meaning of ERISA in that they exercised discretionary authority with respect to management and administration of the Plan; and/or management and disposition of the Plan's assets, and/or appointing, monitoring and removing the Plan's fiduciaries.

IV. THE PLAN

A. Nature of the Plan

28. The Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

29. The Plan is a legal entity that can sue or be sued. ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1). However, in a breach of fiduciary duty action such as this, the Plan is neither a plaintiff nor a defendant. Rather, pursuant to ERISA § 409, 29 U.S.C. §1109, and the law interpreting it, the relief requested in this action is for the benefit of the Plan. Stated differently, in this action Plaintiff seeks relief that is plan-wide.

30. The 401(k) portion of the Plan is available to qualified employees once they have completed six months of service. Participation in the Employee Stock Ownership Plan ("ESOP") portion of the Plan, requires 1,000 hours of service in a twelve consecutive month period.

31. According to the 2006 Form 11-K, under the terms of the Plan, 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. The Company's matching contribution is in the form of Sovereign common stock. Participants are 100 percent vested in their 401(k) Plan account balances at all times. Participants become 100 percent vested in their ESOP Plan accounts after completing five years of service. The ESOP portion of the Plan consists entirely of Sovereign common stock.

32. Sovereign's 2006 Form 11-K provides that in the first quarter of 2007, Sovereign's executive management team and Board of Directors decided, during the first quarter of 2007, to freeze the ESOP portion of the Plan in 2007. All participants who were actively employed by Sovereign on May 3, 2007 became 100 percent vested in their ESOP account balances. The 401(k) portion of the Plan remains active.

33. The Charles Schwab Trust Company is the trustee of the Plan and holds the Plan's shares of Sovereign stock in a trust established under the Plan.

B. Defendants' Fiduciary Status

34. *Named Fiduciaries*. ERISA requires every plan to provide for one or more named fiduciaries of the Plan pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1002(21)(A). The person named as the "administrator" in the plan instrument is automatically a named fiduciary, and in the absence of such a designation, the sponsor is the administrator. ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

35. *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 "(i) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management of disposition of its assets, (ii) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) 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).

36. Each of the Defendants was a fiduciary with respect to the Plan and owed fiduciary duties to the Plan and its participants under ERISA in the manner and to the extent set forth in the Plan's documents, through their conduct, and under ERISA.

37. As fiduciaries, Defendants were required by ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1) to manage and administer the Plan, and the Plan's investments solely in the interest of the Plan's participants and 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.

38. 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, and, as further set forth below, the claims against each Defendant are based on such specific discretion and authority.

39. 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 in fact act solely in the interest of participants and beneficiaries, not in the interest 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 participants.

C. Defendants' Fiduciary Roles

40. As previously stated, Sovereign is the Plan's Sponsor. Upon information and belief, the Plan document describes Sovereign, the Board, the Compensation Committee and the Retirement Committee as named fiduciaries of the Plan.

41. Upon information and belief, instead of delegating all fiduciary responsibility for the Plan to external service providers, Sovereign chose to internalize at least some of these fiduciary functions.

42. Upon information and belief, the Plan and its assets are administered and managed 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 its other duties, were responsible for oversight of Plan

investment options, policies, and the performance of the Plan investments, as well as the review of investment managers.

43. 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 of Directors regarding these duties and responsibilities and Plan events pertaining to the same.

44. 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.

45. 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.

46. Sovereign is a Plan fiduciary not only as the Plan Sponsor 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.

CLASS ACTION ALLEGATIONS

47. 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"):

48. All persons who were participants in or beneficiaries of the Plan at any time during the Class Period, *i.e.*, between January 1, 2007 and the present, and whose accounts included investments in Sovereign stock.

49. 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 Plaintiff at this time, and can only be ascertained through appropriate discovery, Plaintiff believes there are, at a minimum, thousands of members of the Class who participated in, or were beneficiaries of, the Plan during the Class Period.[1]

50. 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:

(a) whether Defendants each owed a fiduciary duty to Plaintiff and members of the Class;

(b) whether Defendants breached their fiduciary duties to Plaintiff and members of the Class by failing to act prudently and solely in the interests of the Plan's participants and beneficiaries;

(c) whether Defendants violated ERISA; and

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[1] According to the Company's 2006 Form 11-K, the Plan held 10,930,330 and 10,439,183 shares of Sovereign common stock at December 31, 2006 and 2005 respectively.

(d) whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

51. Plaintiff's claims are typical of the claims of the members of the Class because Plaintiff and the other members of the Class each sustained damages arising out of the Defendants' wrongful conduct in violation of federal law as complained of herein.

52. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action, complex, and ERISA litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

53. 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 adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

54. Class action status is also warranted under the other subsections of Rule 23(b) because: (i) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants; (ii) 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 (iii) questions of law or fact common to members of the Class predominate over any questions affecting only individual members and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

SUBSTANTIVE ALLEGATIONS

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

55. 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 Island, and Maryland. According to the Company's 10-K Report 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."

56. 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.

57. During the Class Period until January 14, 2008, to maintain the Company's image as a steady earnings performer and as having strong financial growth, Sovereign persistently under-reported the degree of risk posed to its operations by the Company's heavy exposure to the leveraged finance origination market.

58. 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.) Even as recently as on November 9, 2007, Sovereign maintained in its Form 10-Q for the fiscal third quarter of 2007 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.)

59. 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 made the shocking announcement in its Form 8-K filing with the SEC (January 14, 2008 Form 8-K") 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.

60. 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 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.

January 14, 2008 Form 8-K.

61. 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, 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.

62. 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 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.

63. 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.

64. 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 and Sovereign's imprudent investments, like the June 1, 2006 acquisition of Independence Community Bank Corp, which proved to be detrimental to the Company.

65. 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.

66. 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.

67. During the Class Period, as described herein, Defendants knew or should have known that Sovereign stock was an imprudent investment for the Plan due to the fact that Sovereign lacked appropriate internal controls to ensure the accuracy of its financial reporting and the estimates of its future financial performance to such an extent that it could not meet its disclosure obligations under the securities laws. As a result of these undisclosed facts, Sovereign’s stock price was artificially inflated making it an imprudent investment for the Plan.

68. Upon information and belief, Sovereign regularly communicated with employees, including Plan participants, about the Company’s performance, future financial and business prospects and Sovereign stock. During the Class Period, upon information and belief, the Company fostered a positive attitude toward Sovereign stock as a Plan investment, and/or allowed Plan participants to follow their natural bias toward remaining invested in the stock of their employer, even after divestiture was possible, by not disclosing negative material information concerning investment in Sovereign stock. As such, 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.

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)

69. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

70. At all relevant times, as alleged above, 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.

71. As alleged above, Defendants were all responsible, in different ways and to differing extents, for the selection and monitoring of the Plan's principal investment option, Sovereign common stock.

72. Under ERISA, fiduciaries who exercise discretionary authority or control over management of a plan or disposition of a plan's assets are responsible for ensuring that investment options made available to participants under a plan are prudent. Furthermore, such fiduciaries are responsible for ensuring that assets within the plan are prudently invested. Defendants were responsible for ensuring that all investment in Sovereign stock under the Plan was prudent, and are liable for losses incurred as a result of such investments being imprudent.

73. Additionally, pursuant to ERISA, fiduciaries are required to disregard plan documents or directives they know 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, fiduciaries 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, including plan trustees, to do so.

74. Defendants were obligated to discharge their duties with respect to the 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), 29 U.S.C. § 1104(a)(1)(B).

75. According to the DOL regulations and case law interpreting ERISA § 404, a fiduciary's investment or investment course of action is prudent if: a) he 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) he has acted accordingly.

76. 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
- The projected return of the portfolio relative to the funding objectives of the plan.

77. 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 undue exposure of the Company's operations to leveraged financing 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; and
- 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.

78. Defendants breached their duties to prudently and loyally manage the Plan's assets. During the Class Period, Defendants knew or should have known that Sovereign stock was not a suitable and appropriate investment for the Plan as described herein. Nonetheless,

during the Class Period, Defendants continued to offer Sovereign stock as the principal investment option for the Plan and to direct and approve the ongoing, automatic investment of the future Company contributions in Sovereign stock, instead of other, more suitable, investments. Moreover, during the Class Period, despite their knowledge of the imprudence of the investment, Defendants failed to take adequate steps to prevent the Plan, and indirectly the Plan participants and beneficiaries, from suffering losses as a result of the Plan's investment in Sovereign stock

79. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plan, and indirectly Plaintiff and the Plan's other participants and beneficiaries, lost a significant portion of their retirement investment.

80. 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 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 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)

81. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

82. 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.

83. As alleged above, the scope of the fiduciary responsibilities of all Defendants, to differing extents, included disseminating Plan documents and/or Plan-related information to participants regarding the Plan and/or assets of the Plan.

84. The duty of loyalty under ERISA requires fiduciaries 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.

85. 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 prudence of maintaining investment in the Plan, so that participants can make informed decisions with regard to their investment options available under the Plan.

86. This fiduciary duty to honestly communicate with participants is designed not merely to inform participants and beneficiaries of conduct, including potentially illegal conduct, 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.

87. Furthermore, Defendants breached their fiduciary duties by failing to provide the Plan participants with complete and accurate information regarding the Company's unduly high level of exposure to leveraged financing operations, and the consequent artificial inflation of the value of Sovereign stock, and, generally, by conveying inaccurate information regarding the soundness of the Company's financial health and the prudence of investing retirement contributions in the Company stock.

88. Had the Defendants not constantly reinforced the safety, stability and prudence of investment in Sovereign stock during the Class Period, Plan participants, to the extent they were permitted, could have divested their holdings of Company stock in the Plan or at least diversified such holdings, thereby mitigating the Plan's losses to that extent.

89. Defendants in this Count are also liable as co-fiduciaries because they knowingly participated in and knowingly undertook to conceal the failure of the other fiduciaries to provide complete and accurate information regarding Sovereign stock, despite knowing of their breaches. Further, they enabled such conduct as a result of their own failure to satisfy their fiduciary duties and as a result of having knowledge of the other fiduciaries' failures to satisfy their duty to provide only complete and accurate information to Plan participants, yet not making any effort to remedy the breaches.

90. 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 in the Plan, 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. Plaintiff 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.

91. Plaintiff further contends that the Plan suffered a loss, and Plaintiff and the other Class members suffered losses, by the above-described conduct of Defendants named in this

Count during the Class Period because that conduct fundamentally deceived Plaintiff and the other Class members about the prudence of making and maintaining retirement investments in Sovereign stock, and that, in making and maintaining investments in Sovereign stock, Plaintiff and the other Class members relied to their detriment upon the materially deceptive and misleading statements, acts and omissions of Defendants named in this Count.

92. As a consequence of Defendants' breaches of fiduciary duty, the Plan suffered tremendous losses. If Defendants had 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, and indirectly Plaintiff and the other Plan participants, lost a significant portion of their retirement savings.

93. 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 and the Director Defendants)

94. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

95. This Count alleges fiduciary breach against the following Defendants: Sovereign and the Director Defendants (the "Monitoring Defendants").

96. 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.

97. 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, including the Compensation and the Retirement Committee Defendants (the "Plan Committee Defendants").

98. 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.

99. 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.

100. 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.

101. The Monitoring Defendants breached their fiduciary monitoring duties by, among other things: (a) failing to ensure that the monitored fiduciaries had access to knowledge about the Company's business problems alleged above, which made Sovereign stock an imprudent retirement investment, and (b) failing to ensure that the monitored fiduciaries appreciated the huge and unjustified risk of significant investment loss by rank and file employees in their Plan accounts. The Monitoring Defendants undoubtedly knew that the fiduciaries they were responsible for monitoring were imprudently allowing the Plan to continue offering the Sovereign stock as the main Plan investment yet failed to take action to protect the participants from the consequences of these fiduciaries' failures.

102. In addition, the Monitoring Defendants, in connection with their monitoring and oversight duties, were required to disclose to those they monitored accurate information about the financial condition and practices of Sovereign that they indisputably knew or should have known that these Defendant-fiduciaries needed to make sufficiently informed fiduciary Plan asset investment decisions. This is especially true due to the Company's inappropriate investment practices, which most, if not all, Monitoring Defendants had direct knowledge of, if not complicity in. By remaining silent and continuing to conceal such information from the other fiduciaries, the Monitoring Defendants breached their fiduciary duties under the Plan and ERISA.

103. The Monitoring Defendants are liable as co-fiduciaries because they knowingly participated in the fiduciary breaches by the monitored defendants, they enabled the breaches by these defendants and they had knowledge of these breaches, yet did not make any effort to remedy the breaches.

104. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plan, and indirectly Plaintiff and the Plan's other participants and beneficiaries, lost a significant portion of their retirement investment.

105. 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

Breach of Duty to Avoid Conflicts of Interest

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

106. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

107. 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).

108. 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.

109. Defendants breached their duty to avoid conflicts of interest and to promptly resolve them when they occurred by continuing to allow Company stock as the principal Plan investment during the Class Period, by failing to engage independent fiduciaries and/or advisors who could make independent judgments concerning the Plan's investment in Sovereign stock and the information provided to participants and beneficiaries concerning it, and generally failing to take whatever steps were necessary to ensure that the Plan fiduciaries did not suffer from a

conflict of interest, including notifying the DOL about the information which made employer stock an unsuitable investment for the Plan.

110. Upon information and belief, Defendants breached their duty to avoid conflicts of interest and to promptly resolve them by, *inter alia*: failing to engage independent fiduciaries who could make independent judgments concerning the Plan's investment in Sovereign stock; 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 investment practices; and by otherwise placing the interests of the Company and themselves above the interests of the participants with respect to the Plan's investment in Sovereign stock.

111. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plan, and indirectly Plaintiffs and the Plan's other participants and beneficiaries, lost a significant portion of their retirement investments.

112. 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 V

Co-Fiduciary Liability

(Breaches of Fiduciary Duties in Violation of ERISA §§ 404 and 405 by Sovereign and the Director Defendants)

113. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

114. This Count alleges co-fiduciary liability against the following Defendants: Sovereign and the Director Defendants (the "Co-Fiduciary Defendants").

115. 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.

116. 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.

117. 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 and the Director Defendants 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 true level of exposure to losses stemming from the leveraged financing deals to the other fiduciaries.

118. 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.

119. 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.

120. Because Sovereign Director Defendants knew of the Company's improper business practices, they also knew that the Plan Committee Defendants were breaching their duties by (i) continuing to invest the Plan exclusively 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.

121. **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 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 Plan Committee 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 knowingly participated in the breaches of the Plan Committee Defendants because, as alleged above, they had actual knowledge of the Company's improper and possibly illegal conduct and yet, ignoring their oversight responsibilities (as Directors), permitted the Plan Committee Defendants to breach their duties.

122. 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 specific responsibilities which give rise to his status as a fiduciary, he has enabled another fiduciary to commit a breach.

123. Sovereign's and the Director Defendants' failure to monitor the Plan Committee Defendants enabled those committees to breach their duties.

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

125. 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

126. The Plan suffered millions of dollars in losses because substantially all of the assets of the Plan were imprudently invested or allowed to be invested by Defendants in Sovereign stock during the Class Period, in breach of Defendants' fiduciary duties. This loss was reflected in the diminished account balances of the Plan's participants.

127. Defendants are liable for the Plan's losses in this case because Defendants failed to take the necessary and required steps to ensure effective and informed independent 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. 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, participants did not exercise independent control over

their investments in Sovereign stock, and Defendants remain liable under ERISA for losses caused by such investment.

128. 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.

REMEDY FOR BREACHES OF FIDUCIARY DUTY

129. 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.

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

131. 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."

132. 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.

133. Plaintiff and the Class 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)(2) and (3), 29 U.S.C. §§ 1109(a) and 1132(a)(2) and (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.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

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

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, and 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 attributable to the precipitous decline in the stock of Sovereign equity;

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.

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