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IN RE: SOVEREIGN BANCORP INC. SHAREHOLDERS LITIGATION		**COURT OF COMMON PLEAS PHILADELPHIA COUNTY** **November Term, 2008** **Case No. 2587** **Class and Derivative Action**

PLAINTIFFS' CONSOLIDATED AMENDED CLASS ACTION AND SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiffs, by their attorneys, allege upon information and belief, except as to paragraph 9, which plaintiffs allege upon knowledge, as follows:

NATURE OF THE ACTION

1. This is both a stockholders' class action on behalf of the stockholders of Sovereign Bancorp, Inc. ("Sovereign" or the "Company"), pursuant to Pa. R. Civ. P. 1701-1716, and a derivative action on behalf of Sovereign, pursuant to Pa. R. Civ. P. 1506. The action is brought to enjoin the proposed buyout by Sovereign's controlling shareholder, Banco Santander, S.A. ("Santander"), of the shares of Sovereign's common stock it does not already own, pursuant to a Transaction Agreement dated as of October 13, 2008 (the "Proposed Merger").

2. Pursuant to the terms of the Transaction Agreement, described in detail below, Santander will acquire all shares of Sovereign common stock, not already owned by Santander, through a series of transactions ending with a statutory share exchange in accordance with the Virginia Stock Corporation Act. The terms of the Proposed Merger originally contemplated that holders of Sovereign common stock would have the right to receive .2924 American Depositary Shares ("ADS") of Santander for every one share of Sovereign common stock. At the time it was announced, the deal valued Sovereign at approximately $3.81 per share, representing no premium to Sovereign's trading price as of Friday, October 10. In the weeks since the Proposed Merger was announced, the implied price per share has decreased significantly.

3. The Proposed Merger is the product of a flawed process that has resulted in a proposed transaction at a woefully inadequate and unfair price. By its own admission, the Sovereign Board did not seek to maximize shareholder value by seeking other potential buyers. Instead, a committee of Board members reached out only to Santander, and did everything it could to facilitate a rushed offer only from Santander, in a manner that precluded the possibility of any superior deal for the Company and its shareholders. By virtue of various agreements between and among certain Board members and Santander, the proposed transaction is practically a *fait accompli* that exposes Sovereign and its shareholders to irreparable harm. Once the Merger closes, Sovereign and its shareholders will be exposed to the innumerable and immeasurable risks associated with becoming Santander shareholders, including losing important rights under American law, which will make it impossible to unscramble the eggs and calculate legal damages.

4. As revealed in the Form F-4 Registration Statement and accompanying preliminary proxy materials filed by Santander and Sovereign on November 17, 2008 (the "Preliminary Proxy"), Santander made its first offer on Friday night, October 10, 2008. After a rushed, ill-informed and weak attempt to negotiate over the weekend, the Sovereign Board accepted Santander's offer, unchanged as to price, on Monday morning, October 13. The Proposed Merger falls well below the fair value analyses of Sovereign's financial advisor, and reflects no real attempt by the Board to obtain a fair market value Sovereign and its public shareholders..

5. Santander first invested in Sovereign in 2006 pursuant to an Investment Agreement that provided, among other things, an option to acquire all of Sovereign for no less than $40 per share after a two-year period. When the Sovereign Board members approached Santander this year, they agreed to waive this price provision of the Investment Agreement. This waiver was unfairly one-sided, because it favored only Santander, not Sovereign, and left in place other provisions of the Investment Agreement that would have facilitated other bids and allowed Sovereign to accept and consider any alternative offers from other potential buyers. In this respect, Sovereign Board members have put their own self-interests ahead of the interests of Sovereign and its public shareholders. Whether because of margin calls or other financing pressures on their own securities positions, or because of their interests in continuing positions with the combined operation of Sovereign/Santander, the Board members have breached their fiduciary duties to Sovereign and its shareholders. Moreover, they have bowed to the pressure of Sovereign's controlling shareholder, Santander, putting its interest in paying as little as possible ahead of Sovereign's interest in obtaining the highest possible price. In particular, the Board has

permitted Santander to cost-average down its investment in Sovereign to the material detriment of Sovereign and its current shareholders, when Sovereign's fair value is, in fact, much higher.

6. Santander has exploited its position of control over Sovereign to effectuate the Proposed Merger at a price that is fundamentally unfair, following a flawed and hastily orchestrated process. Santander openly admits that it proposes to acquire Sovereign at well below book value and that it expects Sovereign to generate positive earnings per share by 2011. Santander has further abused its position of power by entering into the Proposed Merger at a time when Sovereign's stock was trading at historical lows and had lost more than two-thirds of its value in 2008.

7. The Board of Directors of Sovereign has completely abdicated its responsibilities to the Company by approaching Santander, its controlling shareholder, at this particular time, and under the circumstances described in the Preliminary Proxy. This is especially true in light of previous indications that Sovereign had substantial untapped liquidity that it could access and that it was not forced to pursue the Proposed Merger to survive. Demand on the Sovereign Board to act consistently with its fiduciary duties to protect the assets of Sovereign would be futile. As has been publicly disclosed, the purportedly "independent" directors of Sovereign approached Santander to request that Santander make a bid for the Company and these "independent" directors already have entered into binding agreements to support or otherwise expressed their support for the Proposed Merger.

8. Plaintiffs seek to enjoin or rescind the Proposed Merger. As detailed below, Santander has violated its duties as a controlling shareholder by attempting to freeze out the

public shareholders of Sovereign, and the Director Defendants have violated their fiduciary duties to the Company by, among other things, agreeing to the grossly unfair terms of the Transaction Agreement.

THE PARTIES

9. Plaintiffs Florence Catacosinos, William Catacosinos, James W. Catacosinos, William Catacosinos, William Catacosinos IRA, William Catacosinos SEP-IRA, Richard Larsen, Sam Sblendorio and Mary Sblendorio, Steve Dickman and Phyllis R. Feder are stockholders of Sovereign and have held shares at all times relevant to this Action.

10. Nominal defendant Sovereign is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal executive offices located at 1500 Market Street, Philadelphia, Pennsylvania, 19102. Sovereign is the parent company of Sovereign Bank, a financial institution with principal markets in the Northeastern United States. Sovereign's services encompass retail banking, business and corporate banking, cash management, capital markets, wealth management and insurance. Sovereign was founded in 1984 and currently has over 663 million shares issued and outstanding trading on the New York Stock Exchange under the symbol "SOV."

11. Defendant Santander is a financial holding company and is the largest banking organization in Spain. Santander engages in a broad range of banking and financial services worldwide.

12. Defendant Ralph V. Whitworth ("Whitworth") is a member of the Board of Directors of Sovereign and is a principal of Relational Investors LLC ("Relational"), a private investment firm that owns 8.9% of Sovereign's common stock outstanding.

Pursuant to the terms of a settlement agreement described below, Mr. Whitworth was appointed to the Sovereign Board on March 22, 2006 and was reelected at the 2006 annual meeting of shareholders for a three-year term. Also pursuant to the terms of the settlement agreement, defendant William J. Moran was appointed as a director of Sovereign. Mr. Whitworth is a member of the Executive, Audit, Compensation, Nominating and Corporate Governance Committees of the Sovereign Board. Should Relational come to own less than 23 million shares of Sovereign common stock, Mr. Whitworth would be required to resign from the Board.

13. Defendants Gonzalo de Las Heras and Alberto Sanchez have been Santander's designees on Sovereign's Board of Directors since May 31, 2006, the date of Santander's investment in Sovereign. Defendant Gabriel Jaramillo was appointed as Santander's third board designee on July 16, 2008 to fill the vacancy created by the resignation of Santander's prior designee. These three directors are high level executives of and/or consultants to Santander and/or its affiliates. Defendant Sanchez resigned from the Board on October 12, 2008, in connection with the Proposed Merger.

14. Defendants Cameron C. Troilo, Sr., P. Michael Ehlerman, Brian Hard, Marian L. Heard, Andrew C. Hove, Jr., William J. Moran and Maria Fiorini Ramirez are the remaining members of the Sovereign Board. .

15. The defendants named in paragraphs 12 through 14 are collectively referred to herein as the "Director Defendants."

16. The Director Defendants, as officers and/or directors of Sovereign, have a fiduciary relationship and fiduciary responsibilities to Sovereign.

CLASS ACTION ALLEGATIONS

17. Plaintiffs bring this action on their own behalf and as a class action, pursuant to Rule 1702 of the Pennsylvania Rules of Civil Procedure, on behalf of all common stockholders of Sovereign or their successors in interest, who are being and will be harmed by defendants' actions described below (the "Class"). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of defendants.

18. This Action is properly maintainable as a class action because:

a. The Class is so numerous that joinder of all members is impracticable. There are hundreds, if not thousands, of Sovereign stockholders who are located throughout the United States;

b. There are questions of law and fact which are common to the Class, including: whether any of the defendants have engaged or are continuing to act in a manner calculated to benefit themselves at the expense of Sovereign and its public stockholders; whether Santander breached its fiduciary duties to plaintiffs and the Class; and whether plaintiffs and the other Class members would be irreparably damaged if the defendants are not enjoined in the manner described below;

c. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. The claims of plaintiffs are typical of the claims of the other members of the Class and plaintiffs have the same interests as the other members of the Class. Accordingly, plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class;

d. The prosecution of separate actions by individual members of the

Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for defendants, or 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 adjudications or substantially impair or impede their ability to protect their interests; and

e. The defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, preliminary and final injunctive relief on behalf of the Class as a whole is appropriate.

SUBSTANTIVE ALLEGATIONS

The Director Defendants Hurriedly Agree To Sell Sovereign at a Grossly Inadequate Price

19. According to the Preliminary Proxy, the Sovereign Board first met to consider potential capital raising alternatives in late April 2008. The alternatives considered included raising capital in the public or private markets, raising additional capital from Santander or a combination of the two. The Sovereign Board appointed a board committee to evaluate the alternatives. The committee, named the Capital and Finance Committee, initially consisted of defendants Whitworth, Ramirez, Ehlerman and de las Heras. The Board subsequently determined that de las Heras should not be permitted to evaluate Sovereign's capital alternatives because he was a Santander appointed director.

20. The Chairman of the Capital and Finance Committee was defendant Whitworth, a principal of Relational. When Santander's initial 2006 investment in Sovereign was announced, Relational was the largest shareholder of Sovereign. A

portion of Relational's share purchase was funded with margin borrowings from margin accounts at Credit Suisse Securities (USA). Credit Suisse has a lien on the shares held by Relational and its various subsidiaries.

21. The Capital and Finance Committee retained Lehman Brothers, Inc. ("Lehman Brothers") to assist it in exploring equity capital alternatives. According to the Preliminary Proxy, the initial focus of the Capital and Finance Committee appears to have been the issuance of securities to raise capital. The Capital and Finance Committee consulted with Santander's board representatives to the extent that Santander was to be involved in any capital raising transaction. As a result of these initial activities, the full Sovereign Board approved the issuance of equity and debt underwritten by Lehman Brothers. On May 20, 2008, Sovereign completed equity and debt offerings in which $1.9 billion was raised. Santander purchased its *pro rata* share of the equity securities issued.

22. Over four months later, the Capital and Finance Committee convened its next meeting. The Preliminary Proxy does not disclose whether the Committee had met at any point between May 20 and September 29, 2008. The Committee decided to retain a financial advisor to consider strategic and capital alternatives. According to the Preliminary Proxy, the Committee also discussed a letter from a third party indicating its interest in either infusing capital into Sovereign or acquiring it completely. The Preliminary Proxy does not disclose who that third party was, the specific content of the letter or what steps the Capital and Finance Committee took to follow up on the indication of interest.

23. On September 30, 2008, the Capital and Finance Committee

recommended to the full Board that it retain Barclays as Sovereign's financial advisor. The Barclays team was comprised of the same Lehman Brothers employees who had advised Sovereign in the Spring of 2008. Barclays purchased the broker-dealer business of Lehman Brothers in September 2008, including its mergers and acquisition advisory business.

24. Also on September 30, 2008, for reasons that are not disclosed in the Preliminary Proxy, Sovereign terminated the employment of its then-current President and Chief Executive Officer, Joseph P. Campanelli, and approved the appointment of Paul A. Perrault, a long time banking veteran, as its new Chief Executive Officer, effective January 3, 2009. Sovereign also announced that Kirk W. Walters, the Chief Financial Officer of Sovereign, had agreed to serve as interim President and CEO, effective September 30, 2008, succeeding Campanelli, who stepped down immediately.

25. It has been reported that Perrault's hiring so shortly before the Proposed Merger was announced suggests that a transaction with Santander had been in the works for some time, and was not a spur-of-the-moment deal in response to some perceived crisis, as the Preliminary Proxy suggests. As an October 13, 2008 Economic Times article entitled "Santander Eyes Sovereign in Hunt for Bargains" reported, Sandler O'Neill & Partners analysts have noted that:

> Perrault is unlikely to come on board if the bank was looking for just a short term CEO. The analysts suggested that either Santander was consulted on the hire or that the deal has been discussed for some time and Perrault took the role on the understanding he will run Sovereign after its acquisition.

26. On October 9, 2008, Sovereign received another letter from the same third party that had previously expressed an interest in a transaction with Sovereign. The

Preliminary Proxy does not indicate what, if any, steps were taken to follow up with this third party. To the contrary, by the time it received this second indication of interest, the Sovereign Board was already acting as if a transaction with Santander were a *fait accompli*. The Preliminary Proxy reveals only that, for "a number of reasons" (all but one of which are unspecified), the third party letter did not represent an acquisition proposal within the meaning of the Investment Agreement and that formal notice to Santander under the terms of the Investment Agreement was not required.

27. On October 9, 2008, the Sovereign Board authorized those members of the Capital and Finance Committee not affiliated with Santander to act as a special committee with specified powers in connection with Sovereign's review of strategic alternatives, including a strategic transaction with Santander. The Preliminary Proxy fails to disclose what had transpired as between Sovereign and Santander from September 29, 2008, when the Capital and Finance Committee reconvened, through October 9, 2008, when Sovereign appears to have already decided to pursue a transaction with Santander.

28. Santander acquired its controlling stake in Sovereign in May of 2006. Pursuant to the Investment Agreement with Sovereign, at that time, Santander acquired 19.8 percent of Sovereign's outstanding common stock and acquired the right to purchase additional shares not to exceed in the aggregate 24.99 percent of Sovereign's common stock. In connection with its approval of that transaction, the Federal Reserve Board determined that, for the purposes of the Bank Holding Company Act, Santander would control Sovereign and Sovereign would become a non-banking subsidiary of Santander. Sovereign shareholders were not afforded the opportunity to vote on Santander's

investment in Sovereign in 2006.

29. The Investment Agreement also gave Santander the option to acquire all of Sovereign for no less than $40 per share after a two-year period. That figure was subsequently reduced to $38.10 per share. The Investment Agreement contained other provisions governing the ongoing relationship between Santander and Sovereign including terms that (i) prohibited, until June 1, 2009, Sovereign from soliciting, initiating or taking any action to facilitate or encourage the submission of an acquisition proposal from a third party other than Santander, (ii) restricted Sovereign's right to respond to unsolicited acquisition proposals from third parties other than Santander, including, until June 1, 2009, a prohibition of the right to negotiate with third parties with respect to any offer that is less than, or enter into an acquisition agreement with any such third party unless the acquisition price is at least, $38.10 per share, and (iii) mandated a "first negotiation" right and a "last look" matching right for Santander along with timing and procedural considerations during the entire term of the Investment Agreement that would make it more difficult for a third party other than Santander to acquire Sovereign.

30. In directing the special committee (*i.e.*, the Capital and Finance Committee less its Santander representative) to review strategic alternatives, the Sovereign Board authorized the committee to conduct negotiations with Santander on behalf of Sovereign and to waive any potential breach by Santander of the Investment Agreement that could occur as a result of discussions, including the provision of the Investment Agreement that prohibited Santander from making a proposal of less than $38.10 per share. Thus, although the Preliminary Proxy references no prior discussions regarding a potential transaction between Sovereign and Santander, the Board determined

to allow Santander to breach one specific term of the Investment Agreement so Santander could make an acquisition proposal at any price. The Preliminary Proxy does not indicate that Sovereign requested a release from Santander of Sovereign's corresponding obligations under the Investment Agreement, such as the prohibition against approaching third parties or the grant of last look matching rights, or that Sovereign conditioned the permission to breach the Investment Agreement on anything at all.

31. On October 9, 2008, Sovereign sent a letter to Santander stating that Sovereign would not view any discussions with Santander concerning a potential transaction or any proposal by Santander to be a breach of the terms of the Investment Agreement. Again, the Preliminary Proxy does not indicate that Sovereign conditioned this material waiver on anything at all, or that Sovereign received any consideration whatsoever for the waiver.

32. The very next day, although it purportedly had not been made aware of the selective waiver until the day before, Santander, through its financial advisers, communicated to Barclays an offer to acquire 100% of Sovereign's voting securities at an exchange ratio of 0.294 of a Santander ADS per share of Sovereign common stock, for an implied price of $3.83 per share based on the closing price for Santander's shares that day. This opening bid had the same price term as the bid that was accepted by Sovereign the very next business day. This initial proposal also contemplated a $600 million increase in the availability for funds under a loan facility to Sovereign Bank, and an agreement by Relational and all non-Santander directors of Sovereign to vote their shares in favor of the transaction.

33. According to the Preliminary Proxy, on the next day, October 11, 2008,

the special committee and Barclays presented the terms of Santander's proposal to the full Sovereign board. The Sovereign Board then instructed the special committee to continue negotiating with Santander and authorized the special committee to make a counter-proposal. The Preliminary Proxy does not indicate whether the Santander affiliated directors were involved in formulating the counter proposal.

34. Barclays then informed Santander's financial advisors that the Sovereign board would be willing to consider an offer that valued Santander at $5.50 per share. The Preliminary Proxy does not disclose how the counter proposal was formulated. Barclays also purportedly communicated that the Board's offer was conditioned upon the right to respond to unsolicited offers from third parties after the execution of a merger agreement until closing. Barclays also purportedly communicated that if Sovereign were not permitted to respond to unsolicited offers, the price per share would need to be significantly higher than $5.50. Finally, Barclays conveyed that Sovereign was not interested in Santander's increasing the size of its loan to Sovereign.

35. Later that same day, Barclays conveyed to the special committee that Santander was unwilling to increase its offer price and was unwilling to allow the Sovereign board to respond to unsolicited offers from third parties. The Preliminary Proxy describes no other attempts at price negotiation on the part of Sovereign, its Board or the special committee. That night, Santander forwarded a draft of a transaction agreement to Sovereign's counsel. The draft agreement did not include a provision that allowed the Sovereign board to respond to unsolicited offers and contained express provisions prohibiting Sovereign from responding to unsolicited offers.

36. The Preliminary Proxy states that, on October 12, 2008, the Sovereign

Board met to review the terms of the proposed transaction and to discuss the strategic alternatives available to Sovereign. The Preliminary Proxy does not disclose what other strategic alternatives were discussed.

37. Negotiations ensued that day between the financial and legal advisors to Sovereign and Santander resulting in an offer by Santander to permit Sovereign to respond to unsolicited offers under certain limited circumstances, the elimination of the proposed credit facility and warrants, and an agreement to "certain other matters" that are not specified in the Preliminary Proxy. Counsel for Sovereign also informed Sovereign that, despite its waiver of the price term of the Transaction Agreement, all other terms, including terms relating to the ability of Sovereign to enter into a transaction with a third party, remained in effect.

38. The Board met again in the evening on October 12. The Preliminary Proxy states that Barclays reviewed the strategic alternatives available to Sovereign and that Barclay's "advice and views were consistent with those previously presented." The Preliminary Proxy does not detail what other strategic alternatives were considered and what Barclays' previous advice and views were. Barclays then rendered its opinion, arrived at less than two days after the offer was first proposed, that the exchange ratio was fair from a financial point of view to Sovereign's shareholders "under the circumstances applicable to Sovereign as of the date thereof." Barclays was paid an initial cash fee of $4 million upon execution of the Transaction Agreement and will be paid a contingent fee equal to 0.50% of the aggregate transaction consideration upon completion of the transaction – the minimum for such contingent fee is $15 million.

39. The next morning, Monday October 13, the Sovereign Board issued a

press release confirming that Sovereign was in advanced discussions with Santander regarding a possible business combination. That same morning, the special committee unanimously recommended that the Sovereign board approve and adopt the Transaction Agreement that encompassed the price terms that had been first communicated late on the previous Friday evening. Defendants could not have adequately informed themselves during this truncated time period. At the full meeting of the Board, Barclays' reviewed its analyses and the board concluded that "the transaction was advisable and in the best interests of Sovereign, its shareholders and all other constituencies…."

40. Later that day, the Board was informed that, due to some unexplained "miscommunication between the parties' financial advisors," the exchange ratio had been changed from .294 to .2924, yielding an implied value of $3.81 per Sovereign share, rather than the $3.83 initially proposed. Barclays did not alter its opinion. The Transaction Agreement and requisite voting agreements were then executed.

41. The voting agreements, required by Santander as a condition to the Proposed Merger, require Relational and all non-Santander directors of Sovereign to vote their shares in favor of the Proposed Merger. The non-Santander directors own approximately 6.3% of Sovereign's outstanding shares. The Chairman of Sovereign's Capital and Finance committee, defendant Whitworth, is the principal of Relational which, pursuant to these agreements, has agreed to vote its 8.9% of Sovereign shares in favor of the Proposed Merger. Whitworth, despite being described as an "independent" member of the Sovereign Board, already has spoken out in favor of the Merger calling it "the right transaction at the right time for Sovereign." The Shareholder Agreement between Relational and Santander not only requires that Relational vote its shares in

favor of the proposed Merger, but also that Relational vote against any other proposed transaction. Thus, Relational cannot support any other offer, even if it provides greater value to the non-Santander shareholders of Sovereign.

42. The Preliminary Proxy does not disclose whether Relational or the other non-Santander shareholders have received margin calls or other financial demands making it necessary for the Director Defendants to agree to the terms of the Transaction Agreement. However, given the fact that Relational acquired its Sovereign position at prices between $12 and $20 per share, well above the value of the exchange ratio in the Proposed Merger, a margin call or other financial demand may be one reason Santander was approached by the Capital and Finance Committee.

43. With respect to other bidders, the Transaction Agreement specifically provides that Sovereign must cease “all existing activities, discussions or negotiations” with any bidders. Further, Sovereign is required to contact every potential suitor who had received confidential information about the Company at any time in the 24 months prior to the Proposed Merger, to require that the suitor destroy all such confidential information.

44. On October 13, 2008, Sovereign publicly announced the Proposed Merger. As noted above, the Santander proposal contemplates a stock-for-stock transaction worth a total of $1.9 billion when it was announced. The Merger, expected to close in the first quarter of 2009, originally called for a swap of 0.2924 Santander ADSs for every share of Sovereign common stock. Using the closing prices on Friday, October 10, the aggregate deal price was approximately $3.81 per share. Defendants failed to include a collar mechanism in the Transaction Agreement to protect Sovereign and its shareholders

against a decline in the merger consideration. Since the announcement of the Proposed Merger, the implied transaction price has decreased steadily, dragged down by Santander's declining stock price.

The Proposed Merger Grossly Undervalues Sovereign

45. As described in the Philadelphia Business Journal, the "deal price represents a staggering discount" to historical trading prices of Sovereign. Analyst opinion has also confirmed that Santander is acquiring Sovereign at a bargain basement price. Boenning and Scattergood Inc. analyst Matthew Schulteis correctly observed, among other things, that the exchange ratio represented "5.5x trailing 12-month Adjusted Operating EPS (AOEPS), 35.4% of book value, 68.4% of tangible book, and a core deposit premium of -2.6%. ***These are fire sale prices***." (Emphasis added).

46. Indeed, the Proposed Merger consideration is almost 40% less than the $6.04 per share average closing price of Sovereign's stock during the three weeks prior announcement of the Buyout (and prior to the close of the market on October 10, 2008). Sovereign traded at significantly higher stock prices than the Proposed Merger numerous times in the weeks just prior to October 13. For instance, it closed as high as $4.77 per share on October 7, 2008, $5.84 per share on October 3, 2008 and $8.37 per share on September 26, 2008. Similarly, Sovereign's common stock traded as high as $6.02 per share on October 7, $6.50 on October 3, and $8.61 on September 25, 2008. Sovereign's stock also traded as high as $10.23 per share as recently as September 19, 2008.

47. During a October 14, 2008 conference call concerning the Proposed Merger, Santander's CFO Jose Antonio Alvarez acknowledged that Santander was acquiring Sovereign "at a significant discount" to its actual value. Moreover, Santander

and Sovereign both acknowledged that Sovereign has been weathering and managing the current economic turmoil quite well and that it was well capitalized, its loan book was clean, it had sufficient cushion, and it was overall on solid financial ground at the time the deal was announced. It was also noted during the call that Sovereign had $11.8 billion of unused borrowing capacity from the Federal Reserve, that "Sovereign sold $9 billion of subprime exposure at the beginning of 2007 and . . . ha[d] no exposure to the most difficult products . . . like adjustable rate mortgages [ARMS.]"

48. Santander also acknowledged during the conference call that its acquisition of Sovereign was in every way beneficial to its own banking business, and resulted substantially from its inside knowledge of the Company obtained since 2006. Specifically, Santander projected that it will receive a lucrative thirty percent (30%) return on the seventy-five percent (75%) it is buying now and a fifteen percent (15%) return on its total investment in Sovereign. Santander also noted that because Sovereign had recently written-down toxic loan assets, it did "not expect more negative surprises arising from [the loan] book" and that "Sovereign is positioned to represent . . . an attractive entry point in . . . the Northeastern U.S. market . . . [which] has a strong regional presence and there is potential to improve the efficiency and commercial productivity of the network." Also, reportedly because of recent tax code amendments concerning acquisitions of corporations with losses for tax purposes, Santander will benefit from hundreds of millions or even billions of dollars in tax write-offs from the Proposed Merger.

49. Sovereign and the Individual Defendants agreed to this deal despite a host of other overwhelming indicators and admissions that the Proposed Merger consideration

drastically undervalues Sovereign. While the Preliminary Proxy talks at length about current general economic conditions, by all accounts before October 13, the Company was (and is) on solid financial footing.

50. For example, on September 8, 2008, the Company filed a Form 8-K with the SEC stating that while the recent economic conditions such as the bailout of Fannie Mae and Freddie Mac by the U.S. government would adversely impact Sovereign, the Company had nevertheless prepared itself well for possible future deterioration in the economy and issued additional common stock to strengthen its capital levels. This announcement stated confidently, among other things, that even in the event that "Sovereign was required to write off [the additional common stock it issued], and was not able to record a tax benefit for the loss, Sovereign's capital levels would still exceed the levels required to be considered well-capitalized."

51. Then, on September 19, 2008, the Company filed another Form 8-K with the SEC stating that it had taken a "major step to reduce risk in its investment portfolio by selling its entire portfolio of collaterized debt obligations." In addition, Sovereign stated in this Form 8-K that it "continues to be proactive in reducing risk on its balance sheet[]" and reported that "Sovereign is well capitalized and has adequate cushion according to all regulatory standards."

52. The Company continued to advertise these and other similar reassuring "facts" about its financial condition and viability on a "fact sheet" on its website thereafter (both before and after the deal with Santander was announced). Sovereign stated that it was "important we share [this] information about Sovereign" with shareholders "[c]onsidering the current environment," and touted its financial and

operational soundness, stating, among other things, that it:

- was "***on solid footing under all reporting standards***;"
- was "***well capitalized by all regulatory measures***, meaning ***the bank has a sufficient cushion***;"
- had "undertaken a methodical process to reduce risks in recent months, including the liquidation of its entire portfolio of collateralized debt obligations (CDOs);"
- had "***adequate liquidity to meet all our cash needs***. Sovereign has $11.8 billion of unused borrowing capacity at the Federal Reserve and FHLB;" and
- had "an experienced executive team that has managed through economic downturns in the past." (Emphasis added).

53. Analysts Matthew Kelley and Mike I. Shafir of Sterne Agee, in a report dated September 30, 2008, agreed with Sovereign's assessment of itself and its solid foundation. Kelley and Shafir reassured shareholders that "Sovereign is not in the same camp as Wachovia and Washington Mutual Bank on the credit quality front[.]"

54. Kelley and Shafir further stated that after their discussions with Sovereign's management, their concerns regarding Sovereign's liquidity had been assuaged, and that Sovereign would be able to reestablish itself as a "high quality and conservative Northeast commercial bank" by "reducing non-core assets, reducing expense levels and boosting capital and reserve ratios" with new CEO Perrault and Kirk W. Walters (Sovereign's acting interim CEO, who will become Sovereign's Senior Executive Vice President, Chief Administrative Officer and CFO effective January 3, 2009), as a team.

55. Santander has also readily confirmed the financial strength of the Company even absent the Proposed Merger, acknowledging that Sovereign is and has been well-positioned to weather the current economic crisis.

56. For instance, during the October 14, 2008 conference call, Fortis analyst Diego Barron asked about Sovereign's funding availability including details about the balance sheet in terms of liquidity. Santander curiously stated that that was "a question for the Sovereign Board," but then confirmed that Sovereign's "balance sheet is fairly well-balanced" . . . and that Sovereign had "$11.8 billion liquidity facility . . . from the Federal Reserve[.]"

57. Deutsche Bank analyst Carlos Berastain also asked Alvarez on the October 14 conference call for his view of what "the long-term sustainability of Sovereign would have been without Santander having been involved." Alvarez responded that "sustainability of Sovereign as a standalone platform in the U.S." was possible "if you have a good management in place and you . . . have good underwriting standards in terms of the loan book . . . [and] don't take . . . significant financial risk in the markets." If so, said Alvarez, Sovereign could survive as a standalone entity and "produce good results for the shareholders." He then admitted that Sovereign had "been facing the storm in relatively good shape" and "is well capitalized" with "clean or basically clean" loan books.

58. Sovereign even admitted, eight days after the Proposed Merger was announced, in an October 21, 2008 filing with the SEC, that it was ". . . well capitalized and sound by all financial and operational measures."

59. Thus, by virtually all accounts (including defendants' own), Sovereign was and is well capitalized by all regulatory and other measures. Sovereign's Third Quarter 2008 Results, also announced on October 13, 2008, further confirm this. Sovereign reported (among other things) that its total risk-based capital ratio was 10.87%

on September 30, 2008, compared to 10.37% a year ago.

60. As Janney Montgomery Scott L.L.C. analyst Richard D. Weiss commented on October 14, 2008, it was "unlikely" that Sovereign's financial condition had deteriorated so much that it would require Santander to bail out Sovereign, "because [Sovereign] had been forthcoming about its financial situation." As reported in The Philadelphia Inquirer on October 13,

> Sovereign seemed to have decided to go it alone after it announced in late September that it was naming former Chittenden Corp. chief executive officer Paul A. Perrault to replace Joseph P. Campanelli as CEO, effective Jan. 3.
>
> Yesterday's news left analysts wondering whether Perrault already had been considering a sale or whether Sovereign's condition had deteriorated further.
>
> Janney's Weiss, however, said he thought the second possibility was unlikely because the firm had been forthcoming about its financial situation.

61. Notably, when analysts at Barrons asked during the October 14, 2008 conference call if Santander could explain "why [Sovereign has] accepted such a low price, if there is any kind of additional problems," Santander deflected the question to the Sovereign Board, despite Santander's own extensive inside knowledge about the condition of the Company and its financial stability and value.

62. Other analysts have viewed the Santander-Sovereign deal as a "forced" sale orchestrated by Santander so that it could protect its assets and its investments in Sovereign cheaply. For instance, in his October 14, 2008 report, Boenning and Scattergood Inc. analyst Schulteis commented that "Santander had to step in and do something to protect their original investment." Schulteis also agreed that Santander and Sovereign had positioned Santander to freeze out any competing bids, stating that he did

not

> see a second bidder emerging; Santander has right of first refusal on any subsequent bid. This represents a scenario whereby Santander automatically wins any bid. In our opinion, ***any subsequent bidder would have to overpay for Sovereign to win a bidding war given the degree of detail Santander should have regarding Sovereign gleaned from their 25% ownership***. (Emphasis added).

63. The purchase price offered for the 75.65% of Sovereign that it does not currently own is less than Santander paid in 2006 for 24.9% of Sovereign. Further, the implied value per share offered by Santander is significantly lower than the range of values yielded by most of Barclays' financial analyses of the transaction price. Barclays' discounted cash flow analysis, using base case projections, yielded a range of implied values of approximately \$6.11 to \$7.39 per share of Sovereign common stock. Using "stress case" financial projections, the discounted cash flow analysis yielded a value of \$4.72 to \$5.90 per Sovereign share. These analyses were performed using unusually high discount rates of 18.0 to 20.0%. The Preliminary Proxy does not disclose the details of the management projections utilized to perform the discounted cash flow analysis.

The Director Defendants and Santander Have Put Their Own Self-Interests Ahead of the Interests of Sovereign and its Shareholders

64. Moreover, pursuant to the terms of the Proposed Merger, the current management and directors will apparently keep their jobs with the post-Buyout entity, which will be a wholly-owned subsidiary of Santander. Management and the directors have entrenched themselves in their lucrative positions with the Company post-transaction, while agreeing to a deal that leaves the Company's public shareholders with only a fraction of the actual and true value of their investments in Sovereign.

65. Thus, Sovereign's current management and directors will remain with the newly-formed entity, and there will be no changes in Company management or directors after the Company is acquired by Santander. The Director Defendants, as well as Company senior management, have thus entrenched themselves, while Sovereign's public shareholders are being bought out at a steep discount to the actual value of their investments. Moreover, the Company's directors and senior management will presumably receive lucrative payments and other benefits, as well as the acceleration and/or vesting thereof, under their employment agreements and/or the Company's compensation plans as a result of the change in control resulting from the Buyout. For instance, according to the Company's annual proxy statement filed with the SEC, the Director Defendants enjoyed aggregate compensation in fiscal year 2007 in connection with their positions of approximately $1.3 million in fees and stock awards, as well as other valuable perquisites and benefits.

66. Santander has used its position of power to oppress the public shareholders of Sovereign by proposing a Merger at a price that is fundamentally unfair, knowing that no other entity can compete as a bidder. Under the terms of the Investment Agreement pursuant to which Santander first invested in Sovereign in 2006, Santander must be informed of any acquisition proposal for Sovereign and given the right to top any competing bid. Under that agreement as well, Sovereign had the option to freeze any Santander bid for up to nine months, presumably to shop the Company for a better deal. That provision, as well as others, has been waived, leaving Santander as the only option to Sovereign's shareholders. Further, given the agreement of Relational and other non-Santander directors to vote their shares in favor of the Santander Merger, the prospects

for a successful competing bid are slim at best.

67. The prospects for a competing bid are further hampered by Sovereign's agreement to a $95 million termination fee if the Transaction Agreement is terminated in favor of a "superior proposal" which does not meet Santander's subjective definition of a superior proposal. The $95 million termination fee represented approximately 4.75% of the equity value of the deal at the time the Proposed Merger was announced, but now represents even more in light of the steady decline in Santander's share price. Further, should an alternate unsolicited purchaser offer enough to justify the payment of the termination fee, the Sovereign board has agreed to provide Santander with ten business days to match any other offer, further chilling the market and reducing the likelihood of offers from other potential buyers.

68. The Company also has in place a shareholder rights agreement with Mellon Investor Services LLC, which has been amended several times, is apparently triggered upon a potential acquirer's acquisition of a certain percentage of the Company's common shares, and is designed to make alternative bids for the Company prohibitively expensive. Of course, Sovereign and the Director Defendants quickly amended this rights agreement to exempt Santander from its provisions so as to allow the Buyout to proceed. These types of deal protection measures are highly suspect where, as here, defendants failed to perform a pre-agreement market check and conducted a severely truncated valuation of Sovereign.

69. On November 10, 2008, Santander announced that it would commence a rights offering through which it would sell approximately 1.6 billion newly issued Santander ordinary shares. Pursuant to the terms of the Transaction Agreement, the

exchange ratio has been adjusted to account for the dilution of Santander's shares as a result of the rights offering.

70. Sovereign has publicly denied that it was forced into this transaction. In fact, Sovereign officials have stated, according to a filing with the Securities Exchange Commission, that "Santander is acquiring a bank that is on solid financial footing in one of the most desirable footprints in the nation. Sovereign is well capitalized under all regulatory measures, meaning the bank has sufficient cushion. Sovereign has $11.8 billion of unused borrowing capacity at the Federal Reserve at the Federal Home Loan Board." While the Preliminary Proxy describes the economic crisis facing the country, and banks specifically, nowhere does the Preliminary Proxy indicate that Sovereign itself was faced with a crisis sufficient to justify its hasty entry into the Transaction Agreement with Santander. Sovereign has failed to explain why then it would sell itself at a bargain basement price to Santander.

Defendants Have Breached and Are Continuing to Breach Their Fiduciary Duties

71. Defendants have breached their fiduciary duties by reason of the acts and transactions complained of herein, including their execution of the Transaction Agreement with Santander, without a meaningful effort to ascertain the true and accurate transactional value of the Company. Instead, Defendants hastily conducted, at best, an ineffective and illusory evaluation of Sovereign, and failed to engage in any sort of thorough market check or similar mechanism.

72. Defendants have also breached their fiduciary duties by failing to disclose all material information in connection with the Agreement and the sale of the Company to Santander. As described herein, the disclosures made in the Preliminary Proxy are

inadequate and misleading, thereby disabling Sovereign's shareholders from making informed decisions regarding how to vote their shares with respect to the Proposed Merger.

73. Unless enjoined by this Court, defendants will continue to breach their fiduciary duties owed to Sovereign, plaintiffs and the other members of the Class.

COUNT I

DIRECT CLAIM FOR BREACH OF FIDUCIARY DUTY BY SANTANDER

74. Plaintiffs repeat and re-allege each and every allegation set forth herein.

75. Santander is a controlling shareholder of Sovereign. Santander owns 24.4% of Sovereign's outstanding shares, has three designees on the Sovereign Board, had an option to purchase the remaining shares of Sovereign at a set price, had the right to be informed of and to top any alternative bid for Sovereign, and has various other arrangements with respect to the operations of Sovereign under the Investment Agreement. Santander is considered to be a controlling shareholder by the Federal Reserve Board for purposes of the U.S. Bank Holding Company Act. As the controlling shareholder, Santander had a duty not to use its power in such a way as to deprive the remaining shareholders of their right to receive fair value for their shares of Sovereign. Santander has breached this duty by acting in its own self-interests and in a manner that is not in the best interests of all shareholders of Sovereign.

76. Not only does Santander have three designated members on Sovereign's twelve-member Board, but Santander also has effective control and effective veto power over Sovereign's Board with respect to certain crucial matters. According to Sovereign's March 24, 2008 proxy, "[t]he affirmative vote of the Board, including at least one Santander director is required in order to expand our Board over 12 directors and to amend our bylaws

in any manner adversely affecting Santander."

77. Santander, by virtue of its control over Sovereign and its designees on the Sovereign board, dominates and controls the corporate affairs of Sovereign and is in possession of information concerning Sovereign's assets, business, and future prospects. Under the terms of the Investment Agreement, Sovereign and Santander have an obligation to each appoint at least one of the other party's employees to at least one position with direct reporting to the department head within each of its financial control department, internal audit department and risk management departments. This provision gives Santander broad and extensive knowledge of Sovereign's internal operations and financial condition, and other non-public knowledge that is and has been unavailable to other potential bidders. There exists an imbalance and disparity of knowledge and economic power between Santander and the public stockholders of Sovereign that makes it inherently unfair for Santander to pursue the Proposed Merger.

78. Further, Santander is aware that, under the circumstances where Santander has the right to top other bids for Sovereign, it is in a position of power and control with respect to any alternative transaction. Specifically, since 2006, Santander was required to be notified of any acquisition proposal to acquire Sovereign, after which Santander would have the exclusive right to negotiate an acquisition proposal. Santander has abused this position of control by offering to acquire the shares it does not already own at a price that is unfair and the product of self-dealing.

79. Santander has timed its offer to freeze out Sovereign's public shareholders without paying a fair price. The timing of the offer has placed an artificial cap on the market price of Sovereign's common stock, making it impossible for Sovereign's shareholders to

reap the benefits of Sovereign's improved performance and charges for failing investments.

80. Plaintiffs and the Class will suffer irreparable injury because of Santander's actions, including its oppression of Sovereign's non-Santander shareholders and its self-dealing.

81. Plaintiff and the members of the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can plaintiff and the Class be fully protected from the immediate and irreparable injury that Santander's actions threaten to inflict.

WHEREFORE, plaintiffs pray for judgment and relief as follows:

A. Ordering that this action may be maintained as a class action and certifying plaintiffs as the Class representatives;

B. Declaring that defendants have breached their fiduciary and other duties to Sovereign, plaintiff and the other members of the Class;

C. Enjoining defendants from consummating the Proposed Merger;

D. Entering an Order requiring defendants to exercise their fiduciary duties to obtain a transaction that is in the best interests of Sovereign and its shareholders;

E. Rescinding the Proposed Merger, if implemented;

F. Awarding compensatory damages against defendants individually and severally in an amount to be determined upon the proof submitted to this Court;

G. Awarding costs and disbursements, including plaintiff's counsel's fees and experts' fees; and

H. Granting such other and further relief as to the Court may seem just and proper.

COUNT II

DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE DIRECTOR DEFENDANTS

82. Plaintiffs repeat and reallege each and every allegation set forth herein

83. The Director Defendants failed to exercise the care required and breached their duties of loyalty, good faith, candor and independence owed to Sovereign because, among other reasons, the Board:

a. failed to properly value Sovereign;

b. ignored or did not protect against the numerous conflicts of interest resulting from their own interrelationships and connections with Santander, Relational and the Proposed Merger;

c. failed to disclose and/or obtain the true value of the Company;

d. failed to engage in a fair process to ensure that they had negotiated the best price reasonably available;

e. failed to adequately inform itself before hastily negotiating and agreeing to the Proposed Merger over the course of a single weekend;

f. agreed to a transaction that was unfair to Sovereign; and

g. failed to disclose all material information in connection with the Transaction Agreement and the Proposed Merger.

84. The Director Defendants dominate and control the corporate affairs of Sovereign and are in possession of information concerning Sovereign's assets, business, and future prospects. There exists an imbalance and disparity of knowledge and economic power between them and the public stockholders of Sovereign that makes it inherently unfair for them to pursue a proposed transaction.

85. The Director Defendants agreed to waive conditions of the Investment Agreement in order to allow this Proposed Merger to go forward. The Board, which is dominated by designees of Santander and Relational, did not put the interests of Sovereign first in formulating the Proposed Merger. Relational and the other non-Santander directors of Sovereign already have agreed to vote their shares in favor of the Proposed Merger. The Board cannot reasonably believe that the Proposed Merger at the price proposed is in the best interests of Sovereign and its shareholders.

86. While the Shareholder Agreement pursuant to which Relational has agreed to vote its shares in favor of the Proposed Merger provides that Relational is only agreeing to vote its shares in its capacity as a shareholder, defendant Whitworth, who was the Chairman of the committee that approached Santander, is hopelessly and irremediably conflicted with respect to the Proposed Merger. Mr. Whitworth cannot possibly fulfill his duties to Sovereign when Relational already is bound to vote its shares in favor of the Santander Merger transaction.

87. Unless enjoined by this Court, the Director Defendants will continue to breach their fiduciary duties owed to Sovereign, and may consummate the Proposed Merger which does not represent fair value for Sovereign and will not engage in arm's length negotiations on the Proposed Merger terms.

88. To the extent Sovereign asserts that plaintiffs' claims have been released in connection with other, previous litigation unrelated to the current Proposed Merger, then this too will constitute a breach of fiduciary duty, as it will have put Santander's and the Director Defendants' interests ahead of the interests of Sovereign and its current owners without adequate consideration, full and fair disclosure and informed decision-making.

89. The Director Defendants' breaches of fiduciary duty have proximately caused and will continue to cause Sovereign to suffer substantial monetary damages and irreparable harm as a result of the agreement to support the proposed Transaction. Once the Merger is closed, Sovereign will be subject to the law of Spain, and Sovereign's shareholders will lose important rights as American corporate owners. Moreover, they and the Company will be exposed to innumerable and immeasurable risks arising from of Santander's ownership, which will make it impossible, as a practical matter, to calculate legal damages.

90. Sovereign has been injured by reason of the Director Defendants' intentional breach and/or reckless disregard of their fiduciary duties to the Company. Plaintiffs, shareholders and representatives of Sovereign, seek injunctive, rescissory damages, legal damages and other relief for the Company.

DEMAND IS EXCUSED

91. Because there is a strong *prima facie* case in favor the claims asserted on behalf of Sovereign and because serious injustice would result in the absence of this action, demand on Sovereign's Board to sue its members is excused. Plaintiffs have not made such a demand because it is excused and would have been futile. The wrongful course of conduct complained of herein was not the product of a valid exercise of business judgment. Further, a committee of the Board, which defendants describe as "independent," approached Santander and invited Santander to bid for the shares. Thus, any purportedly independent member of the Board was part of the committee that invited Santander to bid for Sovereign. Under these exceptional circumstances, the Sovereign Board is unable, and likely unwilling, to act on behalf of Sovereign and a requirement

that plaintiffs do so would cause irreparable harm to Sovereign.

92. Further, there is a substantial likelihood that the Director Defendants are personally liable to Sovereign for the damages it has sustained and will sustain in the future as a result of the scheme described above. As a consequence, each Director Defendant is in an irreconcilable conflict of interest regarding the prosecution of this action and has a personal pecuniary interest that would be adversely affected if the claims herein were pursued. Accordingly, the Director Defendants cannot exercise the requisite independence necessary to consider a pre-suit demand impartially and in good faith.

93. Demand on the Board is also excused because Sovereign would suffer irreparable injury if demand were required to be made on the Sovereign Board. The full Sovereign Board already has indicated its support for the Proposed Merger. Under the circumstances, there is no member of the current Board of Directors who could independently assess any shareholder demand that the Company pursue a direct claim against Santander. The delay ensuing from a requirement that demand be made would allow defendants to effectuate the Proposed Merger to the irreparable harm of Sovereign. Once the Proposed Merger is effectuated, there is no feasible way to unscramble the eggs and no way for Sovereign to recover any losses.

94. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs pray for judgment and relief as follows:

A. Declaring that defendants have breached their fiduciary and other duties to Sovereign, plaintiff and the other members of the Class;

B. Enjoining defendants from consummating the Proposed Merger

C. Entering an Order requiring defendants to exercise their fiduciary duties to obtain a transaction that is in the best interests of Sovereign and its shareholders;

D. Rescinding the Proposed Merger, if implemented;

E. Awarding compensatory damages against defendants individually and severally in an amount to be determined upon the proof submitted to this Court;

F. Awarding costs and disbursements, including plaintiff's counsel's fees and experts' fees; and

G. Granting such other and further relief as to the Court may seem just and proper.

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VERIFICATION

I, William J. Catacosinos, have reviewed Plaintiffs' Verified Shareholder Class Action and Derivative Complaint and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, I believe them to be true.

November 3, 2008

W. J. Catacosinos

William J. Catacosinos

VERIFICATION

I, Phyllis R. Feder, have reviewed Plaintiffs' Consolidated Amended Complaint, now consolidated and styled as *In re Sovereign Bancorp, Inc. Shareholders Litigation* and know the contents thereof, and the same is true to the best of my own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, I believe them to be true.

December 2, 2008

Phyllis R. Feder

Phyllis R. Feder

<u>**CERTIFICATE OF SERVICE**</u>

I, do hereby certify that service of a true and correct copy of the foregoing was made the 2nd day December, 2008, to counsel listed below by email and first class mail.

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