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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 DAVID WAISBEIN,
12 Plaintiff,
13 v.

No. C-07-2328 MMC

**ORDER DIRECTING PARTIES TO
SUPPLEMENT STIPULATED REQUEST
FOR APPROVAL OF SETTLEMENT**

14 UBS FINANCIAL SERVICES INC.,
15 Defendant
16 _____/

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18 Before the Court is the parties' "Stipulation and [Proposed] Order Re: Voluntary
19 Dismissal and Court Supervision of Settlement," filed September 26, 2008, by which
20 plaintiff David Waisbein and defendant UBS Financial Services Inc. jointly request the
21 Court approve their settlement. Thereafter, on October 17, 2008, the parties filed, with
22 leave of court, a joint memorandum and supporting declarations in support of the
23 stipulation. Having read and considered the parties' joint submissions, the Court finds the
24 parties' showing to be insufficient in one respect, and will afford the parties the opportunity
25 to further supplement their joint request for approval of the settlement.

26 Specifically, the parties have failed to make a sufficient showing that the proposed
27 amount of attorney's fees to be paid is fair and reasonable under the circumstances
28 presented. Because the settlement does not create a common fund, the Court cannot

1 apply the "benchmark" approach, see, e.g., Torrasi v. Tucson Electric Power Co., 8 F. 3d
2 1370, 1376 (9th Cir. 1993) ("In common fund cases [courts] have established 25% of the
3 common fund as the 'benchmark' award for attorney's fees"), and the parties have not
4 submitted any information that would enable the Court to determine if the amount of
5 attorney's fees is fair and reasonable under the lodestar approach, see id. (identifying
6 "lodestar calculation" as alternative method of determining whether settlement of claim for
7 attorney's fees is fair and reasonable).

8 Accordingly, the parties are hereby DIRECTED to file, no later than December 12,
9 2008, a joint supplemental brief, not to exceed five pages in length exclusive of
10 declarations and/or exhibits, to address the issue of whether the amount of attorney's fees
11 proposed is fair and reasonable; alternatively, plaintiff may file a unilateral supplemental
12 brief.

13 **IT IS SO ORDERED.**

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15 Dated: November 18, 2008

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17 MAXINE M. CHESNEY
18 United States District Judge
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