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 19 DAVID WAISBEIN

20 UNITED STATES DISTRICT COURT
 21 NORTHERN DISTRICT OF CALIFORNIA

22 DAVID WAISBEIN, individually and on
 23 behalf of other members of the public
 24 similarly situated,

25 Plaintiffs,

26 vs.

27 UBS FINANCIAL SERVICES INC.; and
 28 DOES 1 through 20, inclusive,

Defendant.

CASE NO. C-07-02328-MMC

**STIPULATION AND [PROPOSED]
 ORDER RE: VOLUNTARY DISMISSAL
 WITH PREJUDICE AND COURT
 SUPERVISION OF SETTLEMENT**

1 Plaintiff David Waisbein ("Plaintiff") and Defendant UBS Financial Services Inc.
2 ("Defendant"), by and through their respective undersigned counsel of record, HEREBY
3 STIPULATE AND AGREE as follows:

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5 WHEREAS, on January 16, 2007, Plaintiff filed this lawsuit individually and on
6 behalf of all others similarly situated, and on behalf of the general public;

7
8 WHEREAS, on May 21, 2008, Plaintiff filed a Fourth Amended Complaint on
9 behalf of himself and two proposed classes of current and former employees;

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11 WHEREAS, Plaintiff has not filed a Motion for Class Certification under Federal
12 Rule of Civil Procedure 23 or a Motion for Conditional Class Certification under 29 U.S.C.
13 section 216(b) and the Court has not certified a class;

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15 WHEREAS, neither the Court nor any party or counsel has issued any notice to the
16 proposed classes;

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18 WHEREAS, Plaintiff and Defendant, after fair, informed and impartial
19 negotiations before an experienced mediator, David A. Rotman, have reached a settlement that
20 contains of a release of Plaintiff's individual claims in this action;

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22 WHEREAS, the Fair Labor Standards Act provides that the release is not binding
23 without judicial supervision of the settlement and California Law provides that the release of
24 claims under Labor Code section 2802 also is not binding without judicial supervision;

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26 WHEREAS, the parties, by this Stipulation and Order, offer to confer with this
27 Court by telephone or in person and to provide answers to the Court's questions regarding the
28 negotiation and content of the settlement;

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~~PROPOSED~~ ORDER

On the stipulation of the parties and ~~on the basis of the facts gathered during the~~ the parties' supplemental filings in support thereof,
~~appearance of the parties before this Court,~~ and good cause appearing therefor,

IT IS ORDERED that: (1) the settlement of the claims of the Plaintiff in this action shall be deemed judicially supervised and approved and dismissed in their entirety with prejudice; and (2) the claims of members of the proposed classes shall be dismissed without prejudice; and (3) this action shall be dismissed in its entirety, each side to bear its own costs and attorneys' fees, except as provided in the confidential Settlement Agreement.

DATED: December 19, 2008



MAXINE M. CHESNEY
UNITED STATES DISTRICT COURT

LEGAL_US_E # 80850102.3