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16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**

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19
20 CHUCK MacCONNACH and WALTER
SCHMIDT, individually, and on behalf of all
21 others similarly situated,

22 Plaintiffs,

23 v.

24 FIRST FRANKLIN FINANCIAL
CORPORATION, and MERRILL LYNCH &
25 CO., INC., GLOBAL MARKETS AND
INVESTMENT BANKING GROUP,

26 Defendants.
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Case No. 3:08-cv-04154 CRB

**STIPULATION AND ORDER RE
CONFIDENTIALITY**

1 WHEREAS, Plaintiffs Chuck MacConnach and Walter Schmidt have requested
2 production by Defendants of certain documents, including personnel files, payroll records,
3 employee handbooks, company policies, employee information, and other documents relating to
4 Plaintiffs' employment with Defendant First Franklin Financial Corporation;

5 WHEREAS, Merrill Lynch. & Co., Inc. ("Merrill Lynch") has asserted that
6 information contained therein is confidential and proprietary information not in the public domain
7 and would potentially infringe individual privacy rights and undermine Merrill Lynch's
8 competitiveness in the marketplace if such information was unnecessarily disclosed;

9 WHEREAS, one party to this action may in the future request that the other party
10 produce documents in this litigation which said party contends are proprietary, private and/or
11 confidential;

12 WHEREAS, the parties acknowledge that this Stipulated Protective Order creates
13 no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the
14 procedures that must be followed and reflects the standards that will be applied when a party
15 seeks permission from the court to file material under seal.

16 WHEREAS, to expedite discovery in this action, while protecting the above-
17 referenced documents and information from unrestricted disclosure to or discovery by third
18 parties, the parties have agreed to production of documents and information upon the terms and
19 conditions specified herein.

20 NOW, THEREFORE,

21 IT IS HEREBY STIPULATED by and among the parties hereto, through their
22 respective counsel of record, as follows:

23 1. For the purpose of this Stipulation, "information" is defined broadly to include
24 information in any form, whether provided in response to a request for information or an
25 interrogatory, in documents, or in testimony. "Document" is defined broadly to include tangible
26 paper as well as information stored electronically on disc, tape or otherwise.

27 2. The parties acknowledge that they will be exchanging confidential or proprietary
28 information solely because they are parties to the above-captioned case and therefore agree that

1 all information exchanged between them that is designated as confidential will be used only for
2 purposes of this case and any litigation or arbitration relating to the claims alleged in this action
3 and/or alternative dispute resolution efforts between the parties hereto and for no other purpose.

4 3. A party may mark any document, or any portions of any document, or any
5 discovery responses, or any transcript or portions of any transcript, produced by that party in
6 discovery as "Confidential" on the face of the document along with an indication identifying the
7 producing party.

8 4. In lieu of creating an alternative designation of "Confidential: Attorney's Eyes
9 Only" documents, the parties agree that a party may redact any document, or any portions of any
10 document, or any discovery responses, or any transcript or portions of any transcript, produced by
11 that party in discovery falling into the following categories:

12 a. The following information regarding third parties, witnesses or other
13 individuals not a party to this action: name (where the individual's identity is not relevant to the
14 issues in this action), address, Social Security number, date of birth, medical records, telephone
15 records/numbers, wage and benefit data, account numbers, tax records, and other financial
16 information such as credits, loans, or other business transactions, assets, and/or income data;

17 b. All documents contained in First Franklin's employee personnel or other
18 files, other than the personnel files of Chuck MacConnach, Walter Schmidt, and any person who
19 has filed with the Court a Consent to Become a Party Plaintiff (except for any client information
20 contained in these former employees' personnel files, which will be treated consistent with
21 subsection (c) below); and

22 c. All documents containing names, account data, or other Confidential
23 information referring to First Franklin's current or former clients.

24 5. Once a party has designated as "Confidential" any document by labeling it
25 "Confidential" on the face of the document along with an indication identifying the producing
26 party, as set forth in paragraphs 3 or 4, respectively, the adverse party receiving the information
27 shall thereafter treat the information as confidential and shall take the steps it deems reasonably
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1 necessary to ensure that others listed in paragraph 10 who have received the information treat it as
2 confidential.

3 6. If the confidential information is contained in testimony offered at the hearing of
4 the case or otherwise, the party seeking to designate the information as confidential shall do so on
5 the record at the time the testimony is offered or as soon thereafter as practical.

6 7. Information inadvertently disclosed without being designated confidential may
7 thereafter be designated confidential by promptly notifying the party receiving the information in
8 writing that such information is confidential and the receiving party shall thereafter treat the
9 information as confidential and shall take the steps it deems reasonably necessary to ensure that
10 others who receive the information treat it as confidential.

11 8. If any party receives from a third party a subpoena, discovery request or other
12 demand for confidential information disclosed in this case, the party receiving the subpoena,
13 discovery request or other demand for confidential information shall immediately notify the party
14 who demanded confidential treatment that it has received a demand for the information and shall
15 take all steps reasonably necessary to preserve the confidentiality of the information. The party
16 seeking to preserve the confidentiality shall pay the reasonable expense of such efforts, and the
17 party in possession of the confidential information shall reasonably cooperate with the party who
18 designated the information as confidential in seeking a protective order or other limitation on
19 disclosure of the confidential information.

20 9. Any document, response, testimony or information which has been marked as
21 "Confidential" may and shall be used solely for the purpose of, in connection with, and to prepare
22 for this action. Neither the original nor any copy of any document, response, testimony or
23 information which has been marked as "Confidential" nor any excerpt, quotation, paraphrase or
24 other description thereof which conveys the confidential contents thereof (hereinafter all
25 collectively referred to as "Confidential Material") shall be disclosed to any person, or used for
26 any purpose, except in accordance with the terms of this Stipulation.

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1 10. Access to and disclosure of Confidential Material designated as "Confidential"
2 shall be limited, except as otherwise provided herein, or agreed by the parties to this Stipulation,
3 or as otherwise ordered by the Court, to the following:

4 a. The Court and its personnel;

5 b. The parties to this action and those employees, officers and directors of the
6 parties who reasonably need access to the Confidential Material in connection with the
7 prosecution or defense of this action, the attorneys of record for said parties, and their associates
8 and stenographic, clerical and paralegal employees, provided that before counsel discloses any
9 Confidential Material counsel shall provide the person to whom the disclosure is to be made with
10 a copy of this Stipulation and agree to abide by its terms;

11 c. Any person whose deposition is taken in this action or who is being
12 prepared by counsel to give testimony at deposition or trial, such persons being prohibited from
13 the use or disclosure of Confidential Material by paragraph 11 below, and the Court reporter at
14 any such deposition; and

15 d. Outside experts, consultants and professional vendors for any party,
16 including their stenographic and clerical personnel, whose advice or consultation is being or will
17 be used by such party in connection with this action, provided that such outside expert or
18 consultant first be shown a copy of this Stipulation and agree to abide by its terms.

19 e. The author of the document or the original source of the information.

20 11. The attorneys for a party may disclose Confidential Material to any person in the
21 course of a deposition taken in this action or in the course of preparing any witness to give
22 testimony at deposition or trial; provided, however, that the witness first must be shown this
23 Stipulation and agree to abide by its terms. Any deponent or witness who is not a party or an
24 employee, officer or director of a party shall not retain the original or any copy of any such
25 Confidential Material and only may be shown such material. Deponents and witnesses shall
26 make no disclosure or use of such Confidential Material, or any part thereof, except to respond to
27 deposition questions during the course of a deposition taken in this action or at trial or otherwise
28 in accordance with this Stipulation. Any deponent or witness who is not a party or an employee,

1 officer or director of a party who is shown any Confidential Material shall first be provided a
2 copy of this Stipulation and shall be informed, as part of the transcribed or reported deposition,
3 that disclosure or other use of Confidential Material, or any part thereof, is controlled by this
4 Stipulation and must be in accordance with this Stipulation. No copy of any portion of any
5 deposition transcript or deposition exhibit for a deposition in this action which contains
6 Confidential Material shall be furnished by the reporter to any person not identified in paragraph
7 10 above.

8 12. Nothing in this Stipulation shall require disclosure of any material that a party
9 contends is protected from disclosure by the attorney-client privilege or the attorney work product
10 doctrine.

11 13. Each party or non-party that designates information or items for protection under
12 this Order must take care to limit any such designation to specific material that qualifies under the
13 appropriate standards. A party producing Confidential Material must take care to designate for
14 protection only those parts of material, documents, items, or oral or written communications that
15 qualify – so that other portions of the material, documents, items, or communications for which
16 protection is not warranted are not swept unjustifiably within the ambit of this Order. Mass,
17 indiscriminate, or routinized designations are prohibited. Designations that are shown to be
18 clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
19 encumber or retard the case development process, or to impose unnecessary expenses and
20 burdens on other parties) may expose the party who made the designations to sanctions; provided,
21 however, that any party seeking the imposition of such sanctions must first meet and confer with
22 the designating party in an attempt to resolve the matter without court intervention. If it comes to
23 a party's or a non-party's attention that information or items that it designated for protection do
24 not qualify for protection at all, or do not qualify for the level of protection initially asserted, that
25 Party or non-party must promptly notify all other parties that it is withdrawing the mistaken
26 designation.

27 14. Entry into this Stipulation shall not and does not constitute an admission or
28 concession or permit an inference that any document, response, testimony or information

1 designated as "Confidential Material" is, in fact, confidential or contains Confidential Material.
2 Conversely, any disclosure of Confidential Material under this Stipulation shall not be construed
3 as a waiver of the confidentiality of the information.

4 15. Any party, through counsel, may make a good faith written objection to the
5 designation of any document, response, testimony or information as "Confidential Material" and
6 may make a motion for an order compelling disclosure of and/or access to such material without
7 restriction. Applicable California law shall govern the burden and standard of proof on any such
8 motion. The failure to seek to remove the confidential designation shall not be construed as a
9 concession that the information is confidential.

10 16. After termination of this action, each party shall continue to maintain and limit
11 access and disclosure to Confidential Material in the manner provided in this Stipulation.
12 Moreover, upon the request of the party producing and marking documents "Confidential," any
13 other party or individual in possession of such documents will return them to the producing party.

14 17. This Stipulation may be modified in part or entirely by written agreement of the
15 parties hereto or upon application to and entry of an Order by the Court for good cause shown.

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1 DATED: January 13, 2008

By: 

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Attorneys for Defendants
First Franklin Financial Corporation and
Merrill Lynch & Co., Inc., as named and as
erroneously sued as Global Markets and
Investment Banking Group

10 DATED: January 13, 2008

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Attorneys for Plaintiffs

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED,

25 Dated: January 14, 2009

