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18 **UNITED STATES DISTRICT COURT**  
 19 **NORTHERN DISTRICT OF CALIFORNIA**

20	CHUCK MacCONNACH et al., individually, and )	Case No. 3:08-cv-04154
21	on behalf of all others similarly situated, )	
22	Plaintiffs, )	<b>STIPULATION AND <del>[PROPOSED]</del> ORDER</b>
23	v. )	<b>SCHEDULING THE RESENDING OF</b>
24	FIRST FRANKLIN FINANCIAL CORP., )	<b>NOTICE AND FINAL APPROVAL</b>
25	et al., )	<b>HEARING</b>
26	Defendants. )	

1 On November 4, 2009, the parties filed their Joint Stipulation and [Proposed] Order For  
2 Resending Notice to Class Members and Implementing a Revised Schedule. [Doc. #56]. As stated  
3 in that filing, in the course of finalizing the settlement data, the parties discovered an error in the  
4 settlement allocation formula used to calculate awards for the FLSA and Rule 23 Class Members.<sup>1</sup>  
5 Although the calculation error was not substantial in the aggregate, it did not produce proper  
6 allocations for the class members.  
7

8 The parties believe that notice should be resent to all eligible Plaintiffs and Class Members,  
9 informing them of the correct estimated settlement allocations, affording them a new opportunity to  
10 object to or request exclusion from the settlement, and affording those who did not submit a claim  
11 an opportunity to do so.<sup>2</sup> Because resending notice to all Class Members will affect subsequent  
12 deadlines for settlement administration, the parties hereby submit for the Court's approval this  
13 Stipulation and [Proposed] Order Scheduling the Resending of Notice and Final Approval Hearing.  
14

15 IT IS HEREBY STIPULATED THAT:  
16

17 1. The parties shall submit the corrected settlement allocation amounts for each class  
18 member (the "New Class Data") to the settlement administrator within five (5) days from the date  
19 of approval of this Proposed Joint Stipulated Schedule;  
20

21 2. In addition to their respective Notices and Claim Forms, each Class Member will  
22 receive a cover letter, substantially in the form of Exhibits 1 and 1-A attached hereto, explaining the  
23 reason for the new Notice and reflecting the corrected individual settlement allocations;

24 (a) Notice of the settlement and the rights of FLSA Class Members to opt in  
25 and/or become participating Claimants shall be given by mailing of the Notice of Collective Action  
26

27 <sup>1</sup> All defined terms contained herein shall have the same meanings as set forth in the Stipulation Re: Settlement of Class  
28 Action executed by the Settling Parties and filed with this Court.

<sup>2</sup> Plaintiffs will bear the costs associated with this process and will not seek to recover these costs from the maximum  
settlement amount.

1 Settlement, Form A (Change of Name and/or Address Information), Form B (Opt-In Form), Form C  
2 (Settlement Claim Certification Form), and Form D (Request for Rescission), in substantially the  
3 form attached hereto as Exhibit 2, by first class mail, postage prepaid, to all FLSA Class Members  
4 (other than Rule 23 Class Members) no later than ten (10) days from the date the New Class Data is  
5 provided to the settlement administrator, pursuant to the applicable provisions in the Stipulation Re:  
6 Settlement of Class Action approved by the Court on July 24, 2009. [Doc. #51];  
7

8 (b) Notice of the proposed settlement and the rights of Rule 23 Class Members to  
9 join the settlement and/or become Participating Claimants or to request exclusion from the  
10 settlement shall be given by mailing of the Notice re: Pendency of Class Action, Form A (Change  
11 of Name and/or Address Information), Form B (Settlement Claim Certification Form), and Form C  
12 (Request for Rescission), in substantially the form attached hereto as Exhibit 3, by first class mail,  
13 postage prepaid, to all Rule 23 Class Members, no later than ten (10) days from the date the New  
14 Class Data is provided to the settlement administrator, pursuant to the applicable provisions in the  
15 approved Stipulation Re: Class Action Settlement;  
16  
17

18 3. Class members shall have thirty (30) days from the date of mailing of Notice (the  
19 “New Notice Response Deadline”)<sup>3</sup> to opt into the settlement, submit a claim for payment, request  
20 exclusion from the settlement or otherwise respond to the Notice pursuant to the terms of section  
21 2.5 (for FLSA Class Members) and section 2.6 (for Rule 23 Class Members) of the approved  
22 Stipulation Re: Class Action Settlement;  
23

24 4. A hearing shall be held before this Court on February 12, 2010, at 10:00 a.m. to  
25 consider whether the Rule 23 settlement should be given final approval by the Court;  
26

27 (a) Written objections by Rule 23 class members to the proposed settlement will

28 <sup>3</sup> Except as otherwise stated herein, the New Notice Response Deadline shall apply to this mailing in the same manner and on the same terms as the Notice Response Deadline as defined in the Stipulation Re: Class Action Settlement.

1 be considered if received by the Claims Administrator or Class Counsel and postmarked on or  
2 before the New Notice Response Deadline, pursuant to the terms of the approved Stipulation Re:  
3 Class Action Settlement;

4 (b) At the Settlement Hearing, Rule 23 class members may be heard orally in  
5 support of or, if they have timely submitted written objections, in opposition to the settlement;

6 (c) Class Counsel and counsel for Defendants should be prepared at the hearing  
7 to respond to objections filed by Rule 23 class members and to provide other information as  
8 appropriate, bearing on whether the settlement should be approved; and  
9

10 5. In the event that the Effective Date occurs, all Settlement Class Members, other than  
11 Rule 23 Class Members who have timely and validly requested exclusion from the settlement, will  
12 be deemed to have forever released and discharged the Released Claims. In the event that the  
13 Effective Date does not occur for any reason whatsoever, the Stipulation as to both the FLSA Class  
14 and the Rule 23 Class shall be deemed null and void and shall have no effect whatsoever.  
15  
16

17 DATED: November 13, 2009

By: /s/ Eric H. Gibbs

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*Attorneys for Plaintiffs*

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DATED: November 13, 2009

By:  /s/ Terry E. Sanchez

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Merrill Lynch & Co., Inc., as named and as  
erroneously sued as Global Markets and  
Investment Banking Group*

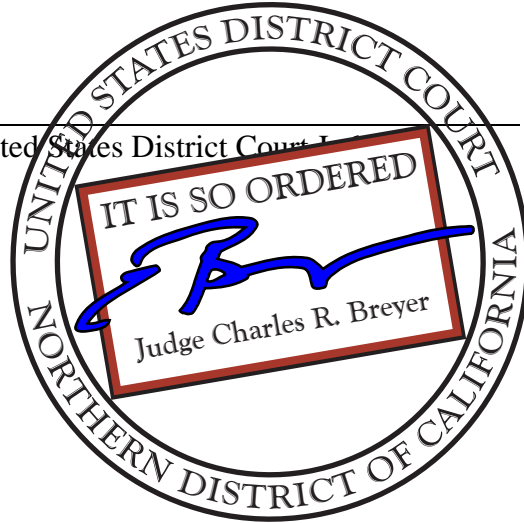
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**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED,

Dated: November 16, 2009

United States District Court



# EXHIBIT 1

[LETTER TO BE SENT BY RUST TO FLSA CLASS MEMBERS]

**ACTION REQUIRED – PLEASE READ**

[Date]

Dear [class member]:

As you may remember, you were sent a notice in September advising you of your approximate settlement share in the case *MacConnach v. First Franklin Financial Corp.*, Case No. 3:08-cv-04154 (N.D. Cal.). Due to a recently corrected calculation error, your estimated settlement share may have changed (the estimated settlement share for some class members has increased while the share for others has decreased).

Your corrected estimated settlement share is \$ \_\_\_\_\_.

**To receive payment as a participant in the settlement:**

- 1. If you have already submitted an opt-in form and settlement claim form**, you do not need to take any action. You will receive a check for the approximate amount listed above, less required tax withholdings, if the court approves the proposed settlement.
- 2. If you have not previously submitted an opt-in form and settlement claim form**, you must sign and return both the enclosed Opt-in Form and Settlement Claim Certification Form **postmarked on or before <<insert date 30 days from date of mailing>>**. Send the signed and completed forms to:

Settlement Administrator c/o Rust Consulting  
P.O. Box 462  
Minneapolis, MN 55440-0462

**To choose not to receive payment and to exclude yourself from the settlement:**

- 1. If you have already submitted an opt-in form and settlement claim form**, you may opt out by submitting the enclosed rescission form **postmarked on or before <<insert date 30 days from date of mailing>>**. These forms should be sent to:

Settlement Administrator c/o Rust Consulting  
P.O. Box 462  
Minneapolis, MN 55440-0462

You will neither receive payment from the settlement nor be subject to the terms of the settlement.

- 2. If you have not previously submitted an opt-in form or settlement claim form** and do not want to participate in the settlement, you do not need to take any action. You will neither receive payment from the settlement nor be subject to the terms of the settlement

If you have any questions, please contact the Settlement Administrator at 1-888-764-8865.



# EXHIBIT 1-A

[LETTER TO BE SENT BY RUST [TO RULE 23 CLASS MEMBERS]

**ACTION REQUIRED – PLEASE READ**

[Date]

Dear [class member]:

As you may remember, you were sent a notice in September advising you of your approximate settlement share in the case *MacConnach v. First Franklin Financial Corp.*, Case No. 3:08-cv-04154 (N.D. Cal.). Due to a recently corrected calculation error, your estimated settlement share may have changed (the estimated settlement share for some class members has increased while the share for others has decreased).

Your corrected estimated settlement share is \$ \_\_\_\_\_.

**To receive payment as a participant in the settlement:**

- 1. If you have already timely submitted a completed settlement claim form**, you do not need to take any action. You will receive a check for the approximate amount listed above, less required tax withholdings, if the court approves the proposed settlement.
- 2. If you have not previously submitted a timely, complete settlement claim form**, you must sign and return the enclosed revised Settlement Claim Certification Form **postmarked on or before <<insert date 30 days from date of mailing>>**. Send the signed form to:

Settlement Administrator c/o Rust Consulting  
P.O. Box 462  
Minneapolis, MN 55440-0462

**To choose not to receive payment and to exclude yourself from the settlement:**

- 1. If you have already submitted a settlement claim form**, you may opt out by submitting the enclosed rescission form **postmarked on or before <<insert date 30 days from date of mailing>>**. This form should be sent to:

Settlement Administrator c/o Rust Consulting  
P.O. Box 462  
Minneapolis, MN 55440-0462

You will neither receive payment from the settlement nor be subject to the terms of the settlement.

- 2. If you have not previously submitted a claim form** and do not want to participate in the settlement, you must submit a written request for exclusion to the Settlement Administrator **postmarked on or before <<insert date 30 days from date of mailing>>**. If you request exclusion, you will neither receive payment from the settlement nor be subject to the terms of the settlement.

If you have any questions, please contact the Settlement Administrator at 1-888-764-8865.

# EXHIBIT 2

Form D  
For  
Notice of Collective Action Settlement

Request for Rescission

I do not want to receive payment from the settlement. Please accept this Request for Rescission and disregard the Opt-In and Settlement Claim Forms I previously submitted.

Name of Class Member (print)\_\_\_\_\_

Address:\_\_\_\_\_

City, State, and Zip Code:\_\_\_\_\_

Date:\_\_\_\_\_

Signature:\_\_\_\_\_

PLEASE RETURN THIS FORM VIA UNITED STATES MAIL TO:

Rust Consulting, Inc.  
Re: MacConnach v. First Franklin Matter  
P.O. Box 462  
Minneapolis, MN 55440-0462  
Toll Free: 1-888-764-8865

**FORMS MUST BE POSTMARKED NO LATER THAN <<INSERT DATE 30 DAYS  
FROM MAILING>> IN ORDER TO BE VALID AND EFFECTIVE.**

# EXHIBIT 3

Form C  
For  
Notice re Pendency of Class Action

Request for Rescission

I do not want to receive payment from the settlement. Please accept this Request for Rescission and disregard the Settlement Claim Form I previously submitted.

Name of Class Member (print)\_\_\_\_\_

Address:\_\_\_\_\_

City, State, and Zip Code:\_\_\_\_\_

Date:\_\_\_\_\_

Signature:\_\_\_\_\_

PLEASE RETURN THIS FORM VIA UNITED STATES MAIL TO:

Rust Consulting, Inc.  
Re: MacConnach v. First Franklin Matter  
P.O. Box 462  
Minneapolis, MN 55440-0462  
Toll Free: 1-888-764-8865

**FORMS MUST BE POSTMARKED NO LATER THAN <<INSERT DATE 30 DAYS  
FROM MAILING>> IN ORDER TO BE VALID AND EFFECTIVE.**