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6 Attorneys for Defendant,
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 7 BANK OF AMERICA, N.A.

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

11 RICHARD G. WHITEHURST and LORRAINE
 D. WHITEHURST, as individuals and as trustees
 12 of the Whitehurst Family Trust,

13 Plaintiffs,

14 vs.

15 BANK OF AMERICA, NATIONAL
 ASSOCIATION, a national banking corporation;
 16 CHARLOTTE A. HEINL, as an individual dba
 Norge Cleaners; and DOES 1 through 100,

17 Defendants.

18 BANK OF AMERICA, NATIONAL
 ASSOCIATION, a national banking corporation,

19 Counterclaimant,

20 vs.

21 RICHARD G. WHITEHURST and LORRAINE
 D. WHITEHURST, as individuals and as trustees
 22 of the Whitehurst Family Trust; and ROES 1
 23 through 100,

24 Counterdefendants.

No.: C 09-04808 MEJ

**STIPULATION OF DISMISSAL WITH
 PREJUDICE AND ~~PROPOSED~~ ORDER
 OF DISMISSAL**

FRCP 41(a)(2)

Compl. Filed: October 8, 2009
 FAC Filed: December 11, 2009

REED SMITH LLP
 A limited liability partnership formed in the State of Delaware

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1 BANK OF AMERICA, NATIONAL
2 ASSOCIATION, a national banking corporation,
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4 Crossclaimant,
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6 vs.
7 CHARLOTTE A. HEINL; and ZOES 1 through
8 100,
9
10 Crossdefendants.

11 Richard G. Whitehurst and Lorraine D. Whitehurst, as individuals and as trustees of the
12 Whitehurst Family Trust (collectively “Whitehurst”); defendant Bank of America, National
13 Association, a national banking association (the “Bank”); and Charlotte A. Heidl, deceased, an
14 individual and dba Norge Cleaners by and through her insurance company the Chicago Insurance
15 Company, one of the Fireman’s Fund Insurance Companies, (“Fireman’s Fund” or “Heidl” and
16 together with Whitehurst and the Bank as “Parties”) have settled this action. (*See* Order Granting
17 Motion for Determination of Good Faith Settlement (April 14, 2015) [Dkt. No. 54].) A true and
18 correct copy of the Settlement Agreement and the First Amendment to the Settlement Agreement
19 (together the “Settlement Agreement”), which the parties agree are both enforceable, are attached to
20 this stipulation as Exhibits A and B, respectively.

21 The Parties **HEREBY STIPULATE** through their designated counsel that the entire above-
22 captioned action be and hereby is dismissed with prejudice pursuant to FRCP 41(a)(2) and the
23 Settlement Agreement. The Parties request that the Court retain jurisdiction to enforce the terms and
24 conditions of the Settlement Agreement and, therefore, respectfully request that the Court
25 incorporate the Settlement Agreement in its Order of Dismissal. “Parties who wish to retain the
26 court’s jurisdiction to enforce their settlement agreement may do so . . . *by incorporating the terms*
27 *of the settlement agreement in the order of dismissal.* In [that] event, breach of the settlement
28 agreement violates the court’s order, thereby creating *ancillary jurisdiction* to enforce the
29 agreement.” *See* Cal. Prac. Guide: Fed. Civ. Pro. Before Trial, Ch. 15-C, § 15:141.1 (The Rutter
30 Group 2011) (emphasis in original) (*citing Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S.

1 375, 381 (1994), *Hagestad v. Tragesser*, 49 F.3d 1430, 1432 (9th Cir. 1995), and *Hill v. Baxter*
2 *Healthcare Corp.*, 405 F.3d 572, 576-577 (7th Cir. 2005)). “[T]he court clearly has ancillary
3 jurisdiction to enforce its own orders and decrees. . . . Therefore, to the extent the settlement is
4 embodied in the judgment, the court can enforce it by execution and by contempt proceedings in
5 appropriate cases.” *Id.*, § 15:141.18 (citing *TNT Marketing, Inc. v. Agresti*, 796 F.2d 276, 278 (9th
6 Cir. 1986)).

7 By signing below, counsel certify that they have the authority to bind, and are binding, the
8 party or parties that they are signing on behalf of.

9
10 **Paladin Law Group[®] LLP**

11 By: /s/ John R. Till
12 John R. Till
13 Attorney for Whitehurst
14 Date: April 24, 2015

Reed Smith LLP

By: /s/ Todd O. Maiden
Todd O. Maiden
Attorney for Bank of America, NA
Date: April 24, 2015

15 **Wood, Smith, Henning & Berman LLP**

16 By: /s/ David F. Wood
17 David F. Wood
18 Attorney for Heint
19 Date: April 24, 2015

20 ~~[PROPOSED]~~ **ORDER OF DISMISSAL**

21 The Court orders that this action shall be and hereby is dismissed with prejudice and with mutual
22 waivers of costs pursuant to Federal Rule of Civil Procedure 41(a)(2) and the Court retains
23 jurisdiction to enforce the parties’ Settlement Agreement, *see* Exhibits A and B, which the Court
24 incorporates herein.

IT IS SO ORDERED.

25 DATED: April 27, 2015

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27 _____
28 Maria-Elena James
United States Magistrate Judge