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5 Attorneys for Plaintiffs Elwood Quesada,  
 James DeRosa, and All Others Similarly Situated  
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 9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN JOSE DIVISION

12  
 13 ELWOOD QUESADA AND JAMES  
 DeROSA and Others Similarly Situated,

14 Plaintiffs,

15 v.

16  
 17 BANC OF AMERICA INVESTMENT  
 SERVICES INC. NKA MERRILL LYNCH  
 18 PIERCE FENNER & SMITH, INC.,

19 Defendant.  
 20  
 21

Case No. CV-11-1703-EMC

**STIPULATION RE THIRD AMENDED  
 COMPLAINT AND TO TAKE HEARING  
 ON DEFENDANT’S MOTION TO DISMISS  
 THE SECOND AMENDED COMPLAINT  
 OFF CALENDAR ; ORDER**

Date: November 21, 2011  
 Time: 2:00 p.m.  
 Place: Courtroom 3 – 5<sup>th</sup> Floor

Complaint Filed: February 7, 2011  
 FAC Filed: May 11, 2011  
 SAC Filed: September 23, 2011

The Honorable Edward M. Chen

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 23  
 24 The parties, Plaintiffs Elwood Quesada and James DeRosa (“Plaintiffs”) and Banc of  
 25 America Investment Services Inc.’s (nka Merrill Lynch Pierce Fenner & Smith, Inc.)  
 26 (“Defendant” or “BOA”), hereby stipulate to Plaintiffs filing of a third amended complaint  
 27 and to take the currently pending Motion to Dismiss (the “Motion”) the Second Amended  
 28 Complaint (“SAC”) off-calendar.

1 WHEREAS, Plaintiffs inadvertently filed an early draft of the SAC that omitted  
2 critical details, and they would like to correct that mistake;

3 WHEREAS, as a matter of right, Plaintiffs can file a third amended complaint in  
4 response to Defendant's MTD the SAC;

5 WHEREAS, Defendant consents to Plaintiffs filing a third amended complaint,  
6 without waiver of any of its defenses thereto;

7 WHEREAS, Plaintiffs consent to Defendant having 21-days to respond to the third  
8 amended complaint;

9 WHEREAS, in light of the filing of a third amended complaint, the currently  
10 scheduled hearing on the MTD the SAC, now set for November 21, 2011, should go off-  
11 calendar.

12 **THEREFORE**, the Parties hereby stipulate to Plaintiffs' filing of a third amended  
13 complaint on or before October 28, 2010, to Defendant filing its response thereto no later  
14 than 21-days thereafter, and to take the pending hearing on the MTD the SAC off-calendar.

15 Respectfully Submitted,  
16 LAW OFFICES OF JON E. DRUCKER, PC

17 Dated: October 25, 2011 By: \_\_\_\_\_ /s/  
18 Jon E. Drucker  
19 Attorneys for Plaintiffs Elwood Quesada, James DeRosa,  
20 and All Others Similarly Situated

21 REED SMITH LLP

22 Dated: October 25, 2011 By: \_\_\_\_\_ /s/  
23 Heather B. Hoesterey  
24 Attorneys for Defendant  
25 BANC OF AMERICA INVESTMENT SERVICES INC.  
26 NKA MERRILL LYNCH PIERCE FENNER & SMITH, INC.,

27 ORDER

28 IT IS SO ORDERED.

Dated: October 27, 2011 By: \_\_\_\_\_  
UNITED STATES DISTRICT COURT

