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[Additional counsel appear on signature page]

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11 **UNITED STATES DISTRICT COURT**

12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 **SAN FRANCISCO DIVISION**

14
15 Merrill Lynch, Pierce, Fenner & Smith
16 Incorporated, as successor by merger to Banc of
17 America Securities LLC, Jason David Glidden,
and Verlin Olen Dobkins,

18 **Plaintiffs,**

19 **v.**

20 N.R. Hamm Quarry, LLC,

21 **Defendant.**

No. 3:12-cv-02127-JSW

22 **STIPULATION AND ~~PROPOSED~~**
23 **SCHEDULING ORDER**
24 **AND CONTINUING HEARING DATE**

STIPULATION

1
2 Plaintiffs Merrill Lynch, Pierce, Fenner & Smith Incorporated, as successor by merger to
3 Banc of America Securities LLC (“BAS”), Jason David Glidden, and Verlin Olen Dobkins, and
4 Defendant N.R. Hamm Quarry, LLC, by and through their respective counsel of record, hereby
5 stipulate as follows:

6 **WHEREAS**, on June 22, 2012, Defendant moved to dismiss Plaintiffs’ complaint;

7 **WHEREAS**, on August 9, 2012, Plaintiffs filed their opposition to the motion to dismiss and
8 cross-moved for summary judgment;

9 **WHEREAS**, Defendant’s reply in support of its motion to dismiss must be filed by September
10 14, 2012;

11 **WHEREAS**, Defendant has requested certain limited discovery from Plaintiffs in connection
12 with the cross-motion for summary judgment;

13 **WHEREAS**, the parties have met and conferred regarding the discovery requested by
14 Defendant. At this time, the parties have reached an agreement regarding those requests, and agree to
15 continue to discuss any additional discovery requests in an effort to avoid motion practice under Fed. R.
16 Civ. P. 56(d);

17 **WHEREAS**, the parties have agreed on a briefing schedule regarding Plaintiffs’ cross-motion
18 for summary judgment; and

19 **WHEREAS**, this is the parties’ first request for an extension of time with respect to the cross-
20 motion for summary judgment.

21 **IT IS THEREFORE STIPULATED AND AGREED**, by and between Plaintiffs and
22 Defendant, by and through their representative counsel of record, subject to this Court’s approval, as
23 follows:

- 24 1. Defendant shall file its opposition to Plaintiffs’ cross-motion for summary judgment (or,
25 subject to satisfaction of Defendant’s discovery requests, a Motion pursuant to Fed. R.
26 Civ. P. 56(d)) by September 28, 2012;
- 27 2. Plaintiffs shall file their reply in support of the cross-motion for summary judgment by
28 November 9, 2012; and

1 3. The hearing on Defendant's motion to dismiss and Plaintiffs' cross-motion for summary
2 judgment shall be rescheduled for November 16, 2012 or December 7, 2012 (the first
3 available hearing date following the Thanksgiving holiday), at the Court's convenience.

4 Dated: August 28, 2012

5 **O'MELVENY & MYERS LLP**

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Attorneys for Defendant

Attestation

I hereby attest that I have obtained concurrence in the filing of this Stipulation from all of the parties listed in the signature blocks above.

Dated: August 28, 2012

By: /s/ Jonathan K. Levine

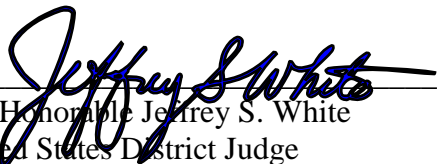
Jonathan K. Levine, Attorney for Defendant

~~PROPOSED~~ ORDER

Having reviewed the above stipulation, **IT IS HEREBY ORDERED** that:

1. Defendant shall file its opposition to Plaintiffs' cross-motion for summary judgment (or, subject to satisfaction of Defendant's discovery requests, a Motion pursuant to Fed. R. Civ. P. 56(d)) by September 28, 2012;
2. Plaintiffs shall file their reply in support of the cross-motion for summary judgment by November 2, 2012; and
3. The hearing on Defendant's motion to dismiss and Plaintiffs' cross-motion for summary judgment shall be rescheduled for December 7, 2012.

Dated: August 29, 2012



 The Honorable Jeffrey S. White
 United States District Judge