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28United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED, et al.,

Plaintiffs,

v.

N.R. HAMM QUARRY, LLC,

Defendant.

No. C 12-02127 JSW

**ORDER VACATING HEARING
ON MOTIONS AND DIRECTING
PARTIES TO SUBMIT JOINT
STATEMENT RE MOTION TO
DISMISS**

The parties are scheduled to appear on December 14, 2012, for a hearing on Defendant's motion to dismiss, and Plaintiff's motion for summary judgment. The Court finds the motions suitable for disposition without oral argument, and it VACATES the hearing. *See* N.D. Civ. L.R. 7-1(b). The Court does, however, request a joint statement from the parties regarding Defendant's motion to dismiss.

Defendant has moved to dismiss, in part, on the basis that Plaintiff fails to state a claim under Rule 12(b)(6). Defendant has not, however, challenged the sufficiency of the pleadings, and its arguments are directed to the merits. Defendant also has not filed a declaration pursuant to Federal Rule of Civil Procedure 56(d). Accordingly, the Court requests that the parties file a joint statement by no later than December 14, 2012, setting forth their positions about whether the Court can resolve the issue of waiver as a matter of law on the existing record.

IT IS SO ORDERED.

Dated: December 7, 2012



 JEFFREY S. WHITE
 UNITED STATES DISTRICT JUDGE

