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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 OAKLAND DIVISION

11 KEVIN MARTIN, DAVID NORRIS, FRANK)
 STONE, individually and on behalf of all other)
 similarly situated,)

12)
 13 Plaintiffs,)
 14)

15 v.)

16 MERRILL LYNCH, PIERCE, FENNER &)
 SMITH, INCORPORATED, MERRILL)
 LYNCH & CO., INC., BRIAN RILEY and)
 DOES One through Twenty,)

17)
 18 Defendants.)
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Case No. 10-04020 CW

**STIPULATION AND [PROPOSED]
 ORDER FOR DISMISSAL WITH
 PREJUDICE OF DEFENDANT
 BRIAN RILEY**

Judge: Hon. Claudia Wilken

Complaint Filed: August 6, 2010
 Trial Date: None Set

20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 Plaintiffs Kevin Martin, David Norris and Frank Stone, through their counsel
 22 (“plaintiffs”), and defendant Brian Riley, through his counsel (“Riley”), stipulate as follows:

23 1. Riley was named as a defendant in this action, originally filed in state court
 24 and removed to this Court on September 8, 2010.

25 2. Riley and his counsel have requested that he be dismissed from this action
 26 with prejudice, and plaintiffs agree to dismiss Riley with prejudice, provided that (a) discovery
 27 directed to Riley and any required attendance at deposition, pretrial or trial and compliance with
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the Federal Rules may be obtained through his counsel as if Riley remained a named party; (b) it will not be relevant or referred to in further proceedings in this matter that Riley was initially named as a party and later dismissed; (c) Riley through his authorized counsel hereby stipulates that he has not been injured in any way by having been a named party in this case; and (d) defendants Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Merrill Lynch & Co., Inc. agree that all acts of Riley relevant to this case were taken by Riley in the course and scope of his employment by Merrill Lynch, Pierce, Fenner & Smith, Incorporated.

3. Dismissal is as to Riley only and not as to defendants Merrill Lynch, Pierce, Fenner & Smith, Incorporated or Merrill Lynch & Co., Inc.

4. Riley shall bear his own attorney's fees and costs in connection with this case and this Dismissal, and the remaining defendants will not attempt to reduce or segregate any of plaintiffs' attorney's fees and costs as related to prosecution of the action against Riley.

5. Defendants Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Merrill Lynch & Co., Inc. agree to be bound by and join in this Stipulation.

SO STIPULATED.

DATED: May 24, 2011

BARTKO, ZANKEL, TARRANT & MILLER
A Professional Corporation

By _____
/s/Robert H. Bunzel
Robert H. Bunzel
Attorneys for Plaintiffs
KEVIN MARTIN, DAVID NORRIS and FRANK
STONE

