

1 **QUADRA & COLL, LLP**  
 James A. Quadra (SBN 131084)  
 2 Email: jquadra@quadracoll.com  
 Rebecca M. Coll (SBN 184468)  
 3 Email: rcoll@quadracoll.com  
 Niall Vignoles (SBN 170937)  
 4 nvignoles@quadracoll.com  
 649 Mission Street, Fifth Floor  
 5 San Francisco, California 94105  
 Telephone: (415) 426-3502  
 6 Facsimile: (415) 625-9936

7 Attorneys for Plaintiff  
 JOHN ROBERT LaBRIOLA

8 **MCGUIREWOODS LLP**  
 9 Matthew C. Kane, Esq. (SBN 171829)  
 Email: mkane@mcguirewoods.com  
 10 Michael D. Mandel, Esq. (SBN 216934)  
 Email: mmandel@mcguirewoods.com  
 11 John A. Van Hook (SBN 205067)  
 Email: jvanhook@mcguirewoods.com  
 12 Christopher A. Killens (SBN 254466)  
 Email: ckillens@mcguirewoods.com  
 13 1800 Century Park East, 8th Floor  
 Los Angeles, CA 90067  
 14 Telephone: 310.315.8200  
 Facsimile: 310.315.8210

15 Attorneys for Defendant  
 16 MERRILL LYNCH, PIERCE, FENNER & SMITH,  
 INCORPORATED

18 UNITED STATES DISTRICT COURT  
 19 NORTHERN DISTRICT OF CALIFORNIA

21 JOHN ROBERT LABRIOLA, on behalf of  
 22 himself and those similarly situated,

23 Plaintiff

24 v.

25 BANK OF AMERICA, NATIONAL  
 ASSOCIATION; MERRILL LYNCH  
 26 PIERCE FENNER & SMITH, INCORP.;  
 BANK OF AMERICA CORPORATION;  
 27 and Does 3-50, inclusive

CASE NO. 4:12-cv-00079-CW

**STIPULATION AND [PROPOSED]  
 ORDER TO VACATE LITIGATION  
 DATES PENDING PRELIMINARY  
 APPROVAL OF CLASS ACTION  
 SETTLEMENT**

1 Plaintiff John LaBriola, on behalf of himself and all those similarly situated (“Plaintiff”)
2 and Defendant Defendant Merrill Lynch Pierce Fenner & Smith, Incorporated (“Defendant”)
3 enter into this joint stipulation and request that the Court enter the proposed order set forth below.

4 **RECITALS**

5 A. WHEREAS, the Court’s Order on Plaintiff’s Stipulation to Continue Trial and Pre-
6 Trial Dates and to Mediate entered September 17, 2012 (Docket No. 41) and notices of reset
7 deadlines entered by the Court on September 18, 2012 (“Notices of Reset Dates”), set forth a
8 number of dates and deadlines, including a deadline to file a Motion to Certify the Class on
9 February 4, 2013, and

10 B. WHEREAS, the parties engaged in an all-day mediation at JAMS with John Bates,
11 Jr. on October 12, 2012, and thereafter continued to engage in arms-length negotiations, and

12 C. WHEREAS, on January 18, 2013, the parties reached agreement on the terms of a
13 proposed settlement, and

14 D. WHEREAS, the parties require sufficient time to prepare and finalize a formal
15 settlement agreement, and

16 E. WHEREAS, the Plaintiff requires sufficient time to prepare a file a motion for
17 preliminary approval of the class action settlement, and

18 F. WHEREAS, the parties would like the dates set forth in the order entered on
19 September 17, 2012 (Docket No. 41) and those appearing in the Notices of Reset Dates entered
20 by the Court on September 18, 2012 to be vacated in order to have sufficient time to finalize the
21 settlement documents and for Plaintiff to seek the Court’s preliminary approval of the class action
22 settlement,

23 **STIPULATION**

24 NOW THEREFORE THE PARTIES STIPULATE:

- 25 1. Defendant will provide a draft settlement agreement to Plaintiff within 14 days.
- 26 2. The parties will finalize the settlement agreement within 35 days.
- 27 3. Plaintiff will prepare and file a motion for preliminary approval of the class action
28 settlement within 60 days.

1           4.       The parties request that the Court vacate the remaining dates and deadlines set  
2 forth in the Order entered on September 17, 2012 (Docket No. 41) and those appearing in the  
3 Notices of Reset Dates entered by the Court on September 18, 2012.

4           5.       If for any reason the Court does not approve the class action settlement, the parties  
5 request that the Court reset the remaining dates and deadlines vacated pursuant to this Stipulation  
6 and Order.

7           **IT IS SO STIPULATED.**

8  
9 Dated: January 18, 2013

McGUIRE WOODS LLP

10 By:  /s/ Michael Mandel

11 MICHAEL D. MANDEL  
12 Attorneys for Defendant  
13 MERRILL LYNCH PIERCE FENNER &  
SMITH, INCORPORATED

14 Dated: January 18, 2013

QUADRA & COLL LLP

15 By:  /s/ Rebecca Coll

16 JAMES A. QUADRA  
17 REBECCA COLL

18 Counsel for Plaintiff  
19 JOHN ROBERT LaBRIOLA

20           **ATTESTATION**

21           I, Rebecca Coll, attest that concurrence in the filing of this document has been obtained  
22 from each of the above signatories.

23 Dated: September 14, 2012

QUADRA & COLL LLP

24  
25 By:  /s/ Rebecca Coll

26 REBECCA COLL  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROPOSED ORDER**

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Based on the above Stipulation, IT IS SO ORDERED. A case management conference will be held on 3/28/13 at 2 p.m. if no motion for preliminary approval has been filed.

DATED: 1/22/2013

  
HON. CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE