

REED SMITH LLP

A limited liability partnership formed in the State of Delaware

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7 Attorneys for Defendants
 FIA Card Services, N.A.,
 8 Bank of America, N.A., and
 Bank of America Corporation
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 11 **IN THE UNITED STATES DISTRICT COURT**
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN JOSE DIVISION**

14
 15 CAROL DUKE AND JACK POSTER, ON
 16 BEHALF OF THEMSELVES AND ALL
 OTHERS SIMILARLY SITUATED,

17 Plaintiffs,

18 vs.

19 BANK OF AMERICA, N.A.; BANK OF
 AMERICA CORPORATION; AND FIA CARD
 20 SERVICES, N.A.,

21 Defendants.

Case No. 5:12-cv-04009-EJD

STIPULATED REQUEST AND
~~**PROPOSED**~~ **ORDER VACATING**
MOTION TO DISMISS, CONTINUING
INITIAL CASE MANAGEMENT
CONFERENCE, AND STAYING
DISCOVERY

[CIVIL L.R. 7-12; 16-2(E)]

1 Pursuant to Local Rules 7-12 and 16-2(e), Plaintiffs Carol Duke and Jack Poster, on behalf of
2 themselves and all others similarly situated (“Plaintiffs”) and Defendants FIA Card Services, N.A.,
3 Bank of America, N.A. and Bank of America Corporation (“Defendants”) (collectively, the
4 “Parties”) hereby stipulate and agree to the following:

5 **RECITALS**

6 1. WHEREAS, on May 16, 2011, plaintiff Stephenie Rose, on behalf of herself and all
7 others similarly situated filed a class action complaint for damages and injunctive relief pursuant to
8 47 U.S.C. section 227 *et seq.* against defendant FIA Card Services, N.A. and Bank of America
9 Corporation (Dkt. No. 1) (the “*Rose Case*”);

10 2. WHEREAS, on August 31, 2011, plaintiffs Sandra Ramirez and Scott Fowler, on
11 behalf of themselves and all others similarly situated, filed a class action complaint for damages and
12 injunctive relief pursuant to 47 U.S.C. section 227 *et seq.* against defendant Bank of America, N.A.,
13 in the United States District Court, Southern District of California, Case No. 11cv2008-LAB (KSC)
14 (Dkt. No. 1) (the “*Ramirez Case*”);

15 3. WHEREAS, on July 30, 2012, Plaintiffs, on behalf of themselves and all others
16 similarly situated, filed a class action complaint for damages and injunctive relief pursuant to 47
17 U.S.C. section 227 *et seq.* against Defendants (Dkt. No. 1) (the “*Duke Case*”);

18 4. WHEREAS, on August 31, 2012, the Court in *Ramirez* issued an Order consolidating
19 Southern District Case Nos. 11cv3040-LAB (KSC) (the “*Johnson Case*”) and 12cv1662-LAB (KSC)
20 (the “*Makin Case*”) with the *Ramirez Case* (Dkt. No. 34) (collectively, the “*Ramirez Consolidated*
21 *Cases*”);

22 5. WHEREAS, on August 31, 2012, Defendants filed a motion to dismiss this Action
23 pursuant to the first-to-file rule, or in the alternative, to stay the action (Dkt. No. 11);

24 6. WHEREAS, on September 14, 2012, Judge Henderson issued an Order of Referral,
25 referring the *Duke Case* to this Court to consider whether it should be related to the *Rose Case* (Dkt.
26 No. 21);

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DATED: October 8, 2012.

LIEFF CABRASER HEIMANN & BERNSTEIN LLP

By /s/ Jonathan David Selbin
Jonathan David Selbin
Attorneys for Plaintiffs
Carol Duke and Jack Poster

DATED: October 8, 2012.

MEYER WILSON CO., LPA

By /s/ Matthew Ryan Wilson
Matthew Ryan Wilson
Attorneys for Plaintiffs
Carol Duke and Jack Poster

**Filer's Attestation: Pursuant to Civil L.R. 5-1(i)(3)
regarding signatures, David S. Reidy hereby attests
that concurrence in the filing of this document has
been obtained.*

~~PROPOSED~~ ORDER


Pursuant to the above Stipulation, Defendants' motion to dismiss is hereby taken off calendar without prejudice. Docket Item No. 11 is TERMINATED.

The November 9, 2012 case management conference is CONTINUED to December 7,, 2012 at 10:00 AM/PM. The Parties shall file a joint statement advising the Court of the status of mediation and settlement discussions no later than November 30, 2012.

Discovery in this action is hereby STAYED and all discovery deadlines are hereby VACATED pending further order from this court.

SO ORDERED:

DATED: 10/10, 2012.



Hon. Edward J. Davira
United States District Court Judge

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