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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NANCY MARTIGNAGO, AMY FERGUSON,
CINDY SELLERS, CATERINA DERKASH,
JUNE PARMAN-FLAX and ROBIN
GRANDUSKY on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

MERRILL LYNCH & CO., INC., MERRILL
LYNCH, PIERCE, FENNER & SMITH
INCORPORATED, BANK OF AMERICA
CORPORATION,

Defendants.

Case No. 11 CIV 03923 (PGG)

Judge Paul G. Gardephe

**MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT, CERTIFICATION OF THE SETTLEMENT
CLASS, APPOINTMENT OF PLAINTIFFS' COUNSEL AS CLASS COUNSEL,
AND APPROVAL OF PLAINTIFFS' PROPOSED NOTICES OF SETTLEMENT**

For the reasons set forth in the Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of the Settlement, Certification of the Settlement Class, Appointment of Plaintiffs' Counsel as Class Counsel, and Approval of Plaintiffs' Proposed Notices of Settlement and in the Declarations of Douglas M. Werman and Jennifer Schoen Gilbert in Support of Plaintiffs' Motion for Preliminary Approval ("Werman Declaration" and "Gilbert Declaration" respectively), Plaintiffs respectfully request that the Court enter an Order:

1. Granting preliminary approval of the Joint Stipulation of Settlement and Release (“Settlement” or “Settlement Agreement”), appended as Attachment 1 to the Werman Declaration.

2. Certifying for settlement purposes the following four sub-classes of individuals classes under Federal Rule of Civil Procedure 23(b)(3):

- a. California Rule 23 Class: The California Class consists of all persons who were employed by Defendants as CAs at any time from February 1, 2008 through and including December 31, 2012;
- b. Maryland Rule 23 Class: The Maryland Class consists of all persons who were employed by Defendants as CAs at any time from February 1, 2009 through and including December 31, 2012;
- c. New York Rule 23 Class: The New York Class consists of all persons who were employed by Defendants as CAs at any time from February 1, 2006 through and including December 31, 2012; and
- d. Washington Rule 23 Class: The Washington Class consists of all persons who were employed by Defendants as CAs at any time from February 1, 2009 through and including December 31, 2012.

3. Certifying for settlement purposes the following class for collective action purposes under the Fair Labor Standards Act, 29 U.S.C. 216(b):

- a. FLSA Class: The FLSA Class consists of all persons who were employed by Defendants as CAs at any time from January 1, 2010 through and including December 31, 2012 in states other than California, Maryland, New York and Washington.

4. Appointing Jennifer Schoen Gilbert, Suzanne E. Bish and George Robot of Stowell & Friedman, Ltd. and Douglas M. Werman of Werman Law Office, P.C. as Class Counsel;

5. Approving Plaintiffs’ Notices of Proposed Settlement of Class Action and Fairness Hearing, appended as Attachments 2 and 3 to the Werman Declaration, and directing their distribution;

6. Approving Plaintiffs' proposed schedule for final Settlement approval;
7. Granting such other, further, or different relief as the Court deems just and proper.

Plaintiffs have contemporaneously submitted a Proposed Order, attached as Exhibit C to Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of the Settlement, Certification of the Settlement Class, Appointment of Plaintiffs' Counsel as Class Counsel, and Approval of Plaintiffs' Proposed Notices of Settlement for the Court's convenience.

Dated: February 15, 2013

Respectfully submitted,

By: s/ Jennifer Schoen Gilbert

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**Attorneys for Plaintiffs and the Putative Rule 23
Class Members and Collective Action Class
Members**