

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Frederick Burton, Individually
And On Behalf of All Others Similarly Situated,

Plaintiff,

v.

Merrill Lynch & Co., Inc. and Merrill Lynch,
Pierce, Fenner & Smith Inc.,

Defendants.

Case No. 1:08-cv-3037 (LAP)

Richard Stanton (as Trustee for Ashley
Stanton), On Behalf of All Others Similarly
Situated,

Plaintiff,

v.

Merrill Lynch & Co., Inc. and Merrill Lynch,
Pierce, Fenner & Smith Inc.,

Defendants.

Case No. 1:08-cv-3054 (LAP)

**STIPULATION AND [~~PROPOSED~~] ORDER CONSOLIDATING ACTIONS,
APPOINTING GERALD WENDEL AND ROBERT BERZIN AS LEAD
PLAINTIFF, AND APPROVING THEIR SELECTION OF COUNSEL**

WHEREAS on May 27, 2008, Gerald Wendel and Robert Berzin timely moved this Court for entry of an order consolidating the above-captioned related actions, appointing them Lead Plaintiff pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA") and approving their selection of Girard Gibbs LLP as Lead Counsel, Stueve Siegel Hanson LLP as Co-Lead Counsel, and Seeger Weiss LLP as Liaison Counsel for the Class;

WHEREAS on May 27, 2008, named plaintiff Richard Stanton and Mark Rowlands, Lester Handler, Sheila Handler and William Bora (collectively, the "Stanton Group") timely moved this Court for entry of an order appointing them Lead Plaintiff and approving their selection of Levi & Korsinsky, LLP to serve as Lead Counsel;

WHEREAS on June 10, 2008, defendants Merrill Lynch & Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith Inc. ("Defendants") filed a response to the motions in which they agreed that the above-captioned actions should be consolidated for all purposes pursuant to Fed. R. Civ. P. 42(a) and took no position on the motions for Lead Plaintiff and Lead Counsel;

WHEREAS on October 9, 2008, the Judicial Panel on Multidistrict Litigation denied the Motion to Transfer for Coordination (*In re Auction Rate Securities (ARS) Marketing Litigation*, MDL No. 1979) that included the *Burton* and *Stanton* actions, among others;

WHEREAS the Stanton Group and its counsel acknowledge that, among the movants for Lead Plaintiff, Mr. Wendel and Mr. Berzin have the largest financial interest in this litigation and should therefore be appointed Lead Plaintiff pursuant to the PSLRA, subject to this Court's approval;

WHEREAS the Stanton Group and its counsel also acknowledge that, pursuant to the PSLRA, the Mr. Wendel's and Mr. Berzin's selection of counsel should be appointed, subject to this Court's approval;

WHEREAS Defendants take no position as to the appointment of Lead Plaintiff and Lead Counsel but reserve all rights and arguments with respect to class certification;

WHEREAS this stipulation is submitted with the understanding that appointment of Lead Plaintiff and selection of Lead Plaintiff's Counsel is subject to the Court's approval, and this stipulation is expressly conditioned thereon;

THEREFORE IT IS HEREBY STIPULATED AND AGREED by the parties, by and through their undersigned counsel, that:

1. The Motion of Gerald Wendel and Robert Berzin for Consolidation of Actions, Appointment as Lead Plaintiff, and Approval of Selection Of Counsel is **GRANTED**.

2. The above-captioned actions are consolidated for all purposes under the caption *In re Merrill Lynch Auction Rate Securities Litigation*, Master Case File No. 08-cv-3037 (LAP).

3. Gerald Wendel and Robert Berzin are hereby **APPOINTED** to serve as Lead Plaintiff in the consolidated action, pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78u-4(a)(3)(B), as amended by the PSLRA.

4. The law firm of Girard Gibbs LLP is hereby **APPOINTED** to serve as Lead Counsel for the Class in the consolidated action, pursuant to Section 21D(a)(3)(B) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B), as amended by the PSLRA.

~~5. The law firm of Stueve Siegel Hanson LLP is hereby **APPOINTED** to serve as Co-Lead Counsel for the Class in the consolidated action, pursuant to Section 21D(a)(3)(B) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B), as amended by the PSLRA.~~

~~6. The law firm of Seeger Weiss LLP is hereby **APPOINTED** to serve as Liaison Counsel for the Class in the consolidated action, pursuant to Section 21D(a)(3)(B) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B), as amended by the PSLRA.~~

7. Defendants reserve all of their rights and arguments with respect to class certification.

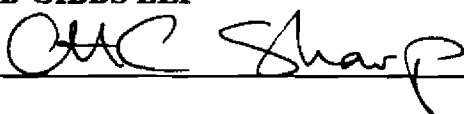
7. Unless otherwise ordered by the Court, Lead Plaintiff shall file an amended consolidated complaint within 45 days of the entry of this stipulation as an order of the Court.

IT IS SO STIPULATED.

DATED: October 7, 2008

Respectfully submitted,

GIRARD GIBBS LLP

By: 

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Counsel for Gerald Wendel and Robert Berzin

DATED: October 20, 2008

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Counsel for the Stanton Group

DATED: October 20, 2008

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*Counsel for Defendants Merrill Lynch & Co., Inc. and
Merrill Lynch, Pierce, Fenner & Smith Incorporated*

SO ORDERED.

DATED: October 26, 2008

Loretta A. Preska
THE HONORABLE LORETTA A. PRESKA
UNITED STATES DISTRICT JUDGE