

1 QUINN EMANUEL URQUHART &
SULLIVAN, LLP
2 Faith E. Gay (*pro hac vice* application pending)
Robert C. Juman (*pro hac vice* application pending)
3 51 Madison Avenue, 22nd Floor
New York, New York 10010
4 Telephone: (212) 849-7000
Facsimile: (212) 849-7100
5 E-mail: faithgay@quinnemanuel.com

6 Richard A. Schirtzer (CA Bar No. 150165)
865 Figueroa St., 10th Floor
7 Los Angeles, California 90017
Telephone: (213) 443-3000
8 Facsimile: (213) 443-3100

9 Karin Kramer (CA Bar No. 87346)
Patrick Doolittle (CA Bar No. 203659)
10 50 California Street, 22nd Floor
San Francisco, California 94111
11 Telephone: (415) 875-6600
Facsimile: (415) 875-6700

12 Attorneys for The Charles Schwab Corporation,
13 Charles Schwab & Co., Inc., Charles Schwab
Investment Management, Inc., Schwab Investments,
14 Charles R. Schwab, Randall W. Merk, Evelyn
Dilsaver, George Pereira, Matthew Hastings, Mariann
15 Byerwalter, Donald F. Doward, William A. Hasler,
Robert G. Holmes, Gerald B. Smith, Donald R.
16 Stephens, and Michael W. Wilsey

COVINGTON & BURLING LLP
David B. Bayless (SBN 189235)
Tammy Albarrán(SBN 215605)
One Front Street
San Francisco, CA 94111-5356
Telephone: (415) 591-6000
Facsimile: (415) 591-6091

Attorneys for Kimon P. Daifotis

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

21 IN RE CHARLES SCHWAB CORP.
22 SECURITIES LITIGATION

Master File No. C-08-01510 WHA

CLASS ACTION

SCHWAB DEFENDANTS' NOTICE OF
WITHDRAWAL FROM JOINT
MOTIONS FOR FINAL APPROVAL OF
SETTLEMENT OF FEDERAL
SECURITIES AND CALIFORNIA 17200
CLAIMS

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT the Schwab defendants¹ (“Schwab”) hereby withdraw
 3 from the Joint Motion for Final Approval of Settlement of Federal Securities Claims (Dkt. # 837)
 4 and the Joint Motion for Final Approval of Settlement of California Class Claims (Dkt # 841),
 5 both submitted on July 23, 2010. These motions are now scheduled to be heard on December 15,
 6 2010.² On November 8, 2010, Schwab invoked the termination provision of the parties' federal
 7 Stipulation of Settlement (“Federal Stipulation”) because Plaintiffs have reneged on the key
 8 consideration to Schwab under the agreement – the scope of the release. Plaintiffs' conduct and,
 9 independently, this Court's October 14, 2010 Order trigger the termination provisions of the
 10 federal settlement. Exh. A, ¶¶ 7.1(e), 7.3. Termination of the federal settlement automatically
 11 results in termination of the California Stipulation of Settlement. Exh. B, ¶¶ 7.1(g), 7.2. Because
 12 Schwab has invoked its right to terminate both settlements in accordance with the procedures
 13 specified in the stipulations, it also must withdraw from the Joint Motions for Final Approval of
 14 those settlements.

15 The attached Notice of Termination (Exh. C), which Schwab served on Plaintiffs on
 16 November 8, 2010 details the bases for termination. Briefly, the Federal Stipulation contains a
 17 termination provision, common in class settlements and routinely enforced,³ that protects the
 18
 19

20 ¹ The Schwab defendants include the following: Charles Schwab Corporation, Charles
 21 Schwab & Co., Inc., Charles Schwab Investment Management, Inc., Charles Schwab
 22 Investments, Charles R. Schwab, the individual officers and employees, Kimon P. Daifotis, and
 the Schwab Trustee defendants.

23 ² Although Civ. Local Rule 7-7(e) pertains to withdrawal from motions, it does not appear to
 24 apply to this situation where there is a joint motion and no opposition. Schwab is filing its Notice
 of Withdrawal at the first practicable moment.

25 ³ See *Manual for Complex Litigation (Fourth)*, § 22.922 (discussing "blow out" provisions
 26 allowing termination of settlement in event of excessive opt-outs); *Ercoline v. Unilever United*
 27 *States, Inc.*, Civ. A. No. 2:10-cv-01747-SRC-MAS (D.N.J. Oct. 5, 2010)(granting preliminary
 28 approval of agreement providing for termination if the judge alters the class settlement, among
 other termination provisions); *Jaffe v. Morgan Stanley & Co., Inc.*, 2008 U.S. Dist. LEXIS 12208,
 *67-*68 (N.D. Cal. Feb. 7 2008)(granting preliminary approval of class action settlement
 agreement permitting Morgan Stanley to terminate if opts out from settlement exceed certain
 (footnote continued)

1 parties from modifications to the agreed-upon terms as a result of the approval process, whether by
2 this Court or on appeal. The Federal Stipulation provides that either side can terminate the
3 agreement within 30 days after: “(a) the Court’s refusal to approve [the] Stipulation or any
4 material part of it; (b) the Court’s declining to enter the Judgment in any material respect . . . or (c)
5 the date upon which the Judgment is modified or reversed in any material respect . . . by the Court
6 of Appeals or the Supreme Court.” Exh. A, ¶ 7.3.

7 The basis for termination here initially arises from Plaintiffs’ position that they remain free
8 to pursue an untold number of claims under California Business & Professions Code Section
9 17200 on behalf of federal class members who are non-California residents. Their position is
10 incompatible with the express terms of the form of judgment to which the parties agreed (Exh. D),
11 and which must be entered as written in order for the settlement to take effect. Exh. A, ¶ 7.1 That
12 judgment requires dismissal of “[t]he Litigation and all claims contained therein” (Exh. D, ¶
13 3). The Litigation is defined as “all complaints consolidated with *In re Charles Schwab*
14 *Corporation Securities Litigation*, No. 08—cv-01510 (WHA).” (Exh. A, ¶ 1.1; Exh. C, ¶ 1). This
15 definition necessarily includes the 17200 claims of non-California residents, which were alleged in
16 both consolidated complaints. In its October 14, 2010 Order, the Court concluded that these non-
17 California resident claims “were never extinguished” by the settlement, and that “federal securities
18 class members resident outside of California are free to sue under Section 17200.” Order (Dkt. #
19 909) at 5, 6. This ruling triggers a termination right under the Stipulation, as it fails to approve a
20 material part of the Stipulation, and to enter or give effect to the proposed Judgment as written.
21 Exh. A, ¶ 7.3 (a), (b). Schwab timely served its Notice of Termination within 30 days thereafter.
22 Exh. A, ¶ 7.3

23 Schwab worked hard to settle this case for the benefit of its clients and shareholders and
24 thought it had accomplished that goal. Schwab agreed to a generous settlement, but only in return
25 for an end to all litigation over the facts and claims alleged in the consolidated complaints. Now
26 _____
27 number or if the settlement fails to become effective in accordance with its terms or is modified
28 after approval).

1 that Plaintiffs have reneged on the primary consideration Schwab was to receive under the
2 stipulations of settlement, Schwab has no choice but to withdraw from the joint motions for final
3 approval.

4
5 DATED: November 8, 2010

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

6

7

8

By Richard Schirtzer/pcd
Richard A. Schirtzer
Faith E. Gay (*pro hac vice appl. pending*)

9

10

Attorneys for The Charles Schwab Corporation,
Charles Schwab & Co., Inc., Charles Schwab
Investment Management, Inc., Schwab
Investments, Charles R. Schwab, Randall W.
Merk, Evelyn Dilsaver, George Pereira, Matthew
Hastings, Mariann Byerwalter, Donald F.
Doward, William A. Hasler, Robert G. Holmes,
Gerald B. Smith, Donald R. Stephens, and
Michael W. Wilsey

11

12

13

14

15

16 DATED: November 8, 2010

COVINGTON & BURLING LLP

17

18

By _____
David B. Bayless
Tammy Albarrán

19

20

Attorneys for Kimon P. Daifotis

21

22

23

24

25

26

27

28

1 that Plaintiffs have reneged on the primary consideration Schwab was to receive under the
2 stipulations of settlement, Schwab has no choice but to withdraw from the joint motions for final
3 approval.

4
5 DATED: November 8, 2010

QUINN EMANUEL URQUHART &
SULLIVAN, LLP


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

By _____
Richard A. Schirtzer
Faith E. Gay (*pro hac vice appl. pending*)

Attorneys for The Charles Schwab Corporation,
Charles Schwab & Co., Inc., Charles Schwab
Investment Management, Inc., Schwab
Investments, Charles R. Schwab, Randall W.
Merk, Evelyn Dilsaver, George Pereira, Matthew
Hastings, Mariann Byerwalter, Donald F.
Doward, William A. Hasler, Robert G. Holmes,
Gerald B. Smith, Donald R. Stephens, and
Michael W. Wilsey

DATED: November 8, 2010

COVINGTON & BURLING LLP

By  _____
David B. Bayless
Tammy Albarrán

Attorneys for Kimon P. Daifotis