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THOMAS P. BLEAU (State Bar No. 152945)
MARTIN R. FOX (State Bar No. 155783)
SAMUEL T. REES (State Bar No. 58099)
MEGAN CHILDRESS (State Bar No. 266926)
BLEAU FOX
A Professional Law Corporation
3575 Cahuenga Boulevard West, Suite 580
Los Angeles, CA 90068
Telephone: (323) 874-8613
Facsimile: (323) 874-1234
Email: bleaushark@aol.com
STReesEsq@earthlink.net

Attorneys for Plaintiff
Transbay Auto Service, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRANSBAY AUTO SERVICE, INC.,

Plaintiff,

vs.

CHEVRON U.S.A. INC.

Defendant.

Case No. 3:09-CV-04932 SI

**STIPULATION, DECLARATION OF
SAMUEL T. REES AND [PROPOSED]
ORDER CONTINUING TRIAL BECAUSE
OF UAVAILABILITY OF WITNESS**

Trial Date: March 19, 2012
Time: 8:30 a.m.
Judge: Hon. Susan Illston
Location: Courtroom 10, 19th Floor
450 Golden Gate Avenue
San Francisco, California

This matter is currently set for trial on March 19, 2012, at 8:30 a.m. One of the central issues to be tried involves the fair market value of Plaintiff's property. Plaintiff has designated Andrew C. Plaine as his sole real estate appraiser expert to testify at trial.

Following this Court's setting of the March 19, 2012 trial date, Plaintiff's counsel learned that Mr. Plaine was just diagnosed with colon cancer and was going to meet with his oncologist to establish an immediate treatment plan. Plaintiff's counsel immediately notified Defense counsel and this Court's clerk of this news. Subsequently, Plaintiff's counsel was advised that Mr. Plaine's oncologist recommended that Mr. Plaine immediately commence chemotherapy (which in fact

1 started on March 5, 2012), that the chemotherapy continue for approximately 6 weeks, that Mr.
2 Plaine then spend the following 6 to 8 weeks recovering from chemotherapy, that Mr. Plaine then
3 undergo surgery on his colon and finally that Mr. Plaine anticipate that his recovery time from the
4 surgery will be approximately 4 weeks during which time he will need to limit his activities.

5 After consultation with Defense counsel, an agreement has been reached to respectfully
6 request that this Court continue the current trial until Mid-August, 2012, as this Court's calendar
7 permits. Plaintiff's counsel has learned that it is unlikely that Mr. Plaine will be in a condition to
8 testify during the time he is recovering from chemotherapy and believes that it would not be
9 appropriate for Mr. Plaine to testify while he is undergoing chemotherapy. Continuance of the trial
10 should alleviate the need for Plaintiff to designate a replacement expert witness or for the parties to
11 undergo the expense and discovery processes that such a replacement designation would entail.

12 For the foregoing reasons, the parties stipulate and request that the current trial date be
13 continued.

14 Dated: March 8, 2012

BLEAU/FOX A P.L.C.
THOMAS P. BLEAU
SAMUEL T. REES

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18 By /s/ Samuel T. Rees
Samuel T. Rees

Attorneys for Plaintiff
Transbay Auto Service, Inc.

19
20 Dated: March 8, 2012

GLYNN & FINLEY, LLP
ROBERT C. PHELPS

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22
23 By /s/ Robert C. Phelps
Robert C. Phelps

Attorneys for Defendant
Chevron U.S.A. Inc.

1 chemotherapy and we discussed the possibility of seeking a continuance of the trial such that the trial
2 would occur prior to Mr. Plaine's anticipated surgery. Since that communication, I have learned that
3 the recovery from such chemotherapy is arduous and lengthy. After further discussions with Mr.
4 Phelps, we were and are both of the view that a continuance until a date after Mid-August, 2012, was
5 more prudent in light of Mr. Plaine's anticipated treatment. On March 7, 2012, I again
6 communicated with Mr. Plaine and he agreed that it would be more prudent to request a continuance
7 of the trial until a date after Mid-August, 2012. Mr. Plaine reported to me that he started
8 chemotherapy on March 5, 2012.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing
10 is true and correct. Executed this 8th day of March, 2011, in New Orleans, Louisiana.

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12 /s/ Samuel T. Rees

13 Samuel T. Rees, declarant
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[PROPOSED] ORDER

Based upon the parties' stipulation and for the reasons set forth in the Declaration of Samuel T. Rees, the trial in this matter, currently set for March 19, 2012, at 8:30 a.m., is hereby continued to 9/4, 2012, at 8:30 a.m.

IT IS SO ORDERED.

Dated: March 9 2012.



Hon. Susan Illston

U.S. District Judge

1 chemotherapy and we discussed the possibility of seeking a continuance of the trial such that the trial
2 would occur prior to Mr. Plaine's anticipated surgery. Since that communication, I have learned that
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[PROPOSED] ORDER

Based upon the parties' stipulation and for the reasons set forth in the Declaration of Samuel T. Rees, the trial in this matter, currently set for March 19, 2012, at 8:30 a.m., is hereby continued to _____, 2012, at _____ .m.

IT IS SO ORDERED.

Dated: March , 2012.

Hon. Susan Illston
U.S. District Judge