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 Marketing Company

20 **UNITED STATES DISTRICT COURT**

21 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO**

22 RICK DELAGARZA, individually, PAUL
 GUTIERREZ, SAL LUCIDO, APRIL MOORE,
 23 CHARLES GRIMMETT, ANTONIO GARCIA,
 and BRIAN CASHWELL, individually and on
 24 behalf of all similarly situated current and former
 employees,

25 Plaintiffs,

26 v.

27 TESORO REFINING AND MARKETING
 COMPANY and DOES 1 through 20, inclusive,

28 Defendants.

Case No. C 09-05803 EMC

Assigned to the Hon. Edward M. Chen

**STIPULATION AND [PROPOSED]
 ORDER TO CONTINUE CASE
 MANAGEMENT CONFERENCE**

1 Pursuant to Civil L.R. 7-12, Plaintiffs Rick Delagarza, Paul Gutierrez, Sal Lucido, April
2 Moore, Charles Grimmett, Antonio Garcia and Brian Cashwell (“Plaintiffs”) and Defendant
3 Tesoro Refining and Marketing Company (“Tesoro”) (collectively, the “Parties”), by and
4 through their undersigned counsel, hereby stipulate and agree as follows:

5 **WHEREAS**, a case management conference is currently scheduled in this matter for
6 March 7, 2013, at 10:30 a.m.;

7 **WHEREAS**, the Parties are engaged in substantial settlement negotiations with a high
8 likelihood of success and hope to focus resources on settlement rather than continued litigation;

9 **WHEREAS**, The Parties participated in two all-day, private mediation sessions with
10 Mediator Mark Rudy, on October 15, 2011 and May 14, 2012. After these sessions, the Parties
11 continued to engage in settlement discussions, ultimately agreeing to the principal terms of a
12 settlement in or around July 2012;

13 **WHEREAS**, after reaching agreement regarding the principal terms of settlement, the
14 Parties spent considerable time and dedicated significant resources to analyzing payroll data
15 consisting of the number of 12-hour shifts worked by, and the applicable wage rates for, each
16 class member in this case (for a period covering 7 1/2 years) and in *Burgess v. Tesoro Ref. &*
17 *Mktg. Co.*, USCD Case No. 10-cv-05870 DMG (PLAx) (“Burgess”) (for a period covering more
18 than 4 years) to ensure that all eligible shifts were discovered in order to make accurate
19 settlement payments to all class members;

20 **WHEREAS**, on August 8, 2012, the Parties consolidated this case with *Burgess*, which
21 involves a certified class of employees at Tesoro’s Los Angeles refinery and is pending in the
22 U.S. District Court for the Central District of California;

23 **WHEREAS**, after reaching the agreement in principal, the Parties also negotiated the
24 resolution of the “going forward” issues at Tesoro’s Los Angeles and Golden Eagle refineries,
25 which required the drafting and negotiation of supplemental agreements to two separate
26 collective bargaining agreements governing the terms and conditions of employment of class
27 members in this action and in *Burgess*, which required the participation of two local bargaining
28 committees of Plaintiffs’ labor union and Tesoro’s labor negotiators;

1 **WHEREAS**, on or about December 4, 2012, the Parties finalized and executed a
2 detailed, 13-page Memorandum of Understanding specifying the terms of the global settlement
3 of this case, *Burgess*, and another related action, *United Steel, Paper & Forestry, Rubber, Mfg.,*
4 *Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO, CLC v. Shell Oil Co., Equilon*
5 *Enterp. LLC dba Shell Oil Prods. US, and Tesoro Ref. & Mktg. Co.*, USDC Case No. CV08-
6 3693 RGK (Ex), which is pending in the U.S. Court of Appeals for the Ninth Circuit, Case Nos.
7 11-55242 and 11-55530;

8 **WHEREAS**, on December 10 and 11, 2012, Class Counsel traveled to and held in-
9 person meetings with class members at the Los Angeles and Golden Eagle refineries to provide
10 information and answer questions regarding the settlement and proposed modifications to the
11 collective bargaining agreements.

12 **WHEREAS**, during and after these meetings, dozens of class members spoke to Class
13 Counsel regarding their individual settlement data, leading Class Counsel to discover certain
14 issues with the settlement data provided by Tesoro, including a number of employees who were
15 each missing six months to a year's worth of shift data.

16 **WHEREAS**, in or around December 2012 and thereafter, Class Counsel brought these
17 issues to Tesoro's attention and, on January 18, 2013 and thereafter, Tesoro provided Class
18 Counsel with three sets of supplemental data for more than 130 class members, consisting of
19 more than 10,000 additional shifts that had been inadvertently excluded from the settlement data.

20 **WHEREAS**, given the discovery of these issues, the Parties were required to renegotiate
21 certain aspects of their settlement agreement, and, on or about February 15, 2013, the Parties
22 reached an agreement on the revised settlement terms.

23 **WHEREAS**, the Parties have requested from the *Burgess* court a brief, two-week
24 continuance of the briefing deadlines to revise the motion for preliminary approval and
25 supporting documents, the settlement notice, the settlement agreement, and other supplemental
26 agreements in light of the revised settlement terms and are close to finalizing these documents.
27 The Parties have not sought an extension of the discovery, pre-trial or trial deadlines in that case;
28 and

1 **WHEREAS**, the Parties agree that judicial economy would be promoted by continuing
2 the case management conference until May 2, 2013, or a date thereafter that is convenient for the
3 Court.

4 **THEREFORE, THE PARTIES HERETO STIPULATE AND RESPECTFULLY**
5 **REQUEST THAT THE COURT ORDER** that the case management conference scheduled for
6 March 7, 2013, be continued to May 2, 2013, or the soonest available date thereafter.

7
8 DATED: March 4, 2013

SEYFARTH SHAW LLP

9
10 By /s/ Timothy M. Rusche
11 Timothy M. Rusche
12 Kristen M. Agnew
13 Attorneys for Defendant
14 Tesoro Refining and Marketing Company

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16 DATED: March 4, 2013

GILBERT & SACKMAN
A LAW CORPORATION

17 By /s/ Linda S. Fang
18 Linda S. Fang
19 Attorneys for Plaintiffs

20 **PURSUANT TO STIPULATION, IT IS SO ORDERED** that the case management
21 conference currently set for March 7, 2013 shall be rescheduled to May 9 at 10:30 a.m.

22 DATED: March 6, 2013.

HONORABLE EDWARD M. CHEN



