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RICK DELAGARZA, PAUL GUTIERREZ,
17 SAL LUCIDO and APRIL MOORE

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 RICK DELAGARZA, PAUL GUTIERREZ,)
21 SAL LUCIDO, and APRIL MOORE,)
individually and on behalf of all similarly)
22 situation current and former employees,)

23 Plaintiffs,)
24 v.)
25 TESORO REFINING AND MARKETING)
COMPANY and DOES 1 through 20, inclusive,)
26 Defendants.)
27)
28)

Case No: C 09-05803 MHP
[Hon. Marilyn Hall Patel]

**STIPULATION TO FILING OF
SECOND AMENDED COMPLAINT
AND WITHDRAWAL OF MOTION TO
DISMISS OR STRIKE; [PROPOSED]
ORDER**

STIPULATION TO FILING OF SECOND AMENDED COMPLAINT AND
WITHDRAWAL OF MOTION TO DISMISS OR STRIKE; [PROPOSED] ORDER

Case No. C 09-05803 MHP

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2 Plaintiffs and Defendant Tesoro Refining and Marketing Company (“Tesoro”), by and
3 through their undersigned counsel, hereby stipulate as follows:

4 **WHEREAS**, Plaintiffs filed this lawsuit in state court on November 17, 2009;

5 **WHEREAS**, Plaintiffs filed their First Amended Complaint on December 8, 2009;

6 **WHEREAS**, Tesoro removed the lawsuit to federal court on December 10, 2009;

7 **WHEREAS**, Tesoro filed a motion to dismiss or strike on December 17, 2009;

8 **WHEREAS**, the lawsuit was reassigned to the Honorable Marilyn Hall Patel on
9 December 21, 2009, and matters presently scheduled for hearing were ordered to be renoticed;

10 **WHEREAS**, the Court scheduled the initial case management conference for March 29,
11 2010;

12 **WHEREAS**, the Court’s Standing Orders prohibits the filing of motions to dismiss
13 before the initial case management conference;

14 **WHEREAS**, at the initial case management conference, the Court established a briefing
15 schedule for Tesoro’s motion to dismiss;

16 **WHEREAS**, Tesoro refiled its motion to dismiss or strike pursuant to Federal Rules of
17 Civil Procedure 12(b)(6) and (f) on April 19, 2010, in accordance with the Court’s briefing
18 schedule;

19 **WHEREAS**, Plaintiffs filed a motion for leave to file a second amended complaint on
20 April 19, 2010;

21 **WHEREAS**, Plaintiffs’ opposition to Tesoro’s motion to dismiss or strike is due on May
22 3, 2010;

23 **WHEREAS**, Tesoro’s opposition to Plaintiffs’ motion for leave to amend is due on May
24 3, 2010; and

25 **WHEREAS**, the parties agree that it is in the interest of judicial economy and the
26 preservation of the parties’ resources for Tesoro to withdraw the pending motion to dismiss or
27 strike and stipulate to the filing of the second amended complaint.

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NOW, THEREFORE, the Parties agree and stipulate that:

(1) Plaintiffs shall file a second amended complaint in the form attached as Exhibit A hereto.

(2) Tesoro shall withdraw the pending motion to dismiss or strike allegations in the first amended complaint without prejudice to its ability to reassert its arguments contained therein, including in any future motion or proceeding.

(3) Tesoro shall file an answer to the second amended complaint within 30 days of the filing thereof.

(4) Plaintiffs agree not to pursue attorneys' fees or costs in connection with Tesoro's withdrawal of its motion to dismiss or strike.

(5) The Court shall hold a further case management conference on June 7, 2010, at 3:00 p.m., at which the parties may appear telephonically, in order to allow the Court to schedule pretrial, trial and other dates in the case in accordance with the joint case management status filed by the parties on March 19, 2010.

IT IS SO STIPULATED.

DATED: May 3, 2010

GILBERT & SACKMAN, A LAW CORPORATION

By /s/ Linda S. Fang
Linda S. Fang
Attorneys for Plaintiffs
RICK DELAGARZA, PAUL GUTIERREZ, SAL
LUCIDO and APRIL MOORE

DATED: May 3, 2010

SEYFARTH SHAW LLP

By /s/ Timothy M. Rusche
Timothy M. Rusche
Attorneys for Defendant
TESORO REFINING AND MARKETING COMPANY

PROPOSED [ORDER]

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 5/4/2010



Hon. M.
United