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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26	STEPHEN P. BERZON (SBN 46540) CONNIE K. CHAN (SBN 284230) ALTSHULER BERZON LLP 177 Post Street, Suite 300 San Francisco, CA 94108 Telephone: (415) 421-7151 Facsimile: (415) 362-8064 Email: sberzon@altshulerberzon.com Email: cchan@altshulerberzon.com RICHARD EDELMAN (pro hac vice) O'DONNELL, SCHWARTZ & ANDERSON, P.C. 1300 L Street, N.W. Suite 1200 Washington, DC 20005 Telephone: (202) 682-9276 Email: redelman@odsalaw.com Attorneys for Defendant Transport Workers Union of America, AFL/CIO UNITED STATES 1 NORTHERN DISTRIC DANIEL DEMETRIS, et al. Plaintiffs, v. TRANSPORT WORKERS UNION OF AMERICA, AFL/CIO, Defendant.	
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		STIPULATION AND [PROPOSED] ORDER Case No. 3:13-CV-5566-VC Dockets.Justia.com

1	Plaintiffs Daniel Demetris, William Burke, Daniel Burstein, Patrick Collins, Richard
2	Gorgas, Paul Herfel, Robert Marini, Abdul Morani, Paul Morrone, Robert Palacek, and Thomas
3	Powell (collectively "Plaintiffs"), and Defendant Transport Workers Union of America,
4	AFL/CIO ("Defendant"), herein referred to collectively as the "Parties," hereby stipulate, by and
5	through their respective attorneys of record, as follows:
6	WHEREAS, on November 20, 2014, Defendant TWU filed a Motion for Protective
7	Order (Dkt. 107) seeking a stay of all merits discovery until 30 days after the Court rules on
8	Defendant's currently pending Rule 12(b)(6) Motion to Dismiss the Second Amended Complaint
9	(Dkt. 104), or until the Court issues a scheduling order authorizing merits discovery to proceed,
10	whichever occurs first;
11	WHEREAS, on December 1, 2014, the Court issued a Protective Order allowing
12	Plaintiffs to "pursue appropriate discovery related to the factual issues raised by TWU's Rule
13	12(b)(1) motion," but staying all other discovery until at least the Case Management Conference
14	scheduled for January 27, 2015 (Dkt. 113);
15	WHEREAS, pursuant to the Court's Protective Order, the Parties met and conferred on
16	the morning of December 2, 2014, and promptly notified the Court that they jointly requested the
17	Court's assistance to resolve their dispute as to which of Plaintiffs' discovery requests related to
18	Defendant's Rule 12(b)(1) motion;
19	WHEREAS, the Court issued a Clerk's Notice later that day (Dkt. 114) setting a
20	telephonic discovery conference for December 4, 2014 at 11:00 a.m.;
21	WHEREAS, the Parties subsequently further met and conferred and reached an
22	agreement regarding the timing of discovery related to Defendant's Rule 12(b)(1) motion, as set
23	forth below, that obviates the need for a discovery conference on December 4;
24	WHEREAS, on November 6, 2014, the Court issued a Clerk's Notice rescheduling the
25	November 13, 2014 Case Management Conference to January 27, 2015 (Dkt. 102); and
26	WHEREAS, Stephen Berzon, lead counsel for TWU, has a pre-existing commitment to
27	attend a Ninth Circuit Conference in Tucson, Arizona from January 26-28, 2015, and is therefore
28	unavailable for a Case Management Conference on January 27, 2015;
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1	HENCE, the Parties hereby stipulate and request an Order setting forth the following:
2	1. The telephonic discovery conference scheduled for December 4, 2014 at 11:00
3	a.m. shall be vacated;
4	2. Defendant's Motion to Dismiss the Second Amended Complaint Pursuant to Fed
5	R. Civ. P. 12(b)(1) [Dkt. 106], currently set for hearing on January 15, 2015, shall be taken off
6	calendar and stayed, to be reset following the Court's ruling on Defendant's pending Motion to
7	Dismiss the Second Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6);
8	3. Discovery related to Defendant's Rule 12(b)(1) Motion to Dismiss the Second
9	Amended Complaint, as provided for in the Court's December 1, 2014 Protective Order (Dkt.
10	113), shall likewise be stayed pending the resetting of the Rule 12(b)(1) Motion; and
11	4. The Case Management Conference currently set for January 27, 2015 shall be
12	continued to February 3, 2015, or such other time after February 3, 2015 as is convenient for the
13	Court.
14	Dated: December 3, 2014STEPHEN P. BERZON (SBN 46540)CONNIE K. CHAN (SDN 284220)
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24	by: <u>/s/ Stephen P. Berzon</u> Stephen P. Berzon
25	
26	Attorneys for Defendant
27	Dated: December 3, 2014 MICHAEL A. CADDELL (SBN 249469)
28	CYNTHIA B. CHAPMAN (SBN 164471)
	2 STIPULATION AND [PROPOSED] ORDER Case No. 3:13-CV-5566-VC

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17	by: <u>/s/ Michael A. Caddell</u>
18	Michael A. Caddell
19	Attorneys for Plaintiffs
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	STIPULATION AND [PROPOSED] ORDER Case No. 3:13-CV-5566-VC

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## **DECLARATION OF STEPHEN P. BERZON IN SUPPORT OF STIPULATION**

I, Stephen P. Berzon, declare as follows:

I am a member in good standing of the bar of the State of California and am one
 of the counsel of record for Defendant TWU in the above-captioned case. I make this
 declaration in support of the Parties' stipulated request to vacate the December 4, 2014
 telephonic discovery conference, to stay Defendants' pending Motion to Dismiss the Second
 Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) [Dkt. 106], and to continue the Case
 Management Conference set for January 27, 2015 to at least February 3, 2015. The facts set
 forth in this declaration I know to be true of my own personal knowledge.

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2. I am lead counsel for TWU on this case, and I have authority to make decisions
11
about any issue that may come up during a case management conference.

On October 28, 2014, TWU filed an Administrative Motion, pursuant to Civil
 Local Rule 6-3(a), to continue the Case Management Conference then scheduled for November
 13, 2014, to 30 days after the Court rules on Defendant's pending motion to dismiss the Second
 Amended Complaint. Dkt. 92.

16
4. On November 6, 2014, the Court issued a Clerk's Notice rescheduling the
17 November 13, 2014 Case Management Conference to January 27, 2015. Dkt. 102.

18 5. I have a pre-existing commitment to attend a Ninth Circuit Conference in Tucson,
19 Arizona from January 26-28, 2015, and am therefore unavailable for a Case Management
20 Conference on January 27, 2015.

6. All previous time modifications in this case are set forth in the Declaration of
Connie K. Chan in Support of Defendant's Motion to Continue Case Management Conference
(Dkt. 92), ¶¶15-29.

Aside from a hearing on Defendant's Rule 12(b)(6) Motion to Dismiss the Second
Amended Complaint set for January 15, 2015, no other deadlines have yet been set in this matter.
I declare under penalty of perjury that the foregoing is true and correct to the best of my
knowledge. Executed at San Francisco, California, on December 3, 2014.

<u>/s/ Stephen P. Berzon</u> Stephen P. Berzon

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STIPULATION AND [PROPOSED] ORDER Case No. 3:13-CV-5566-VC

1	[TROPOSED] ORDER		
2	Pursuant to the Parties' stipulation and for good cause shown, the Court hereby orders the		
3	following:		
4	1. The telephonic discovery conference scheduled for December 4, 2014 at 11:00		
5	a.m. shall be vacated;		
6	2. Defendant's Motion to Dismiss the Second Amended Complaint Pursuant to Fed.		
7	R. Civ. P. 12(b)(1) [Dkt. 106], currently set for hearing on January 15, 2015, shall be taken off		
8	calendar and stayed, to be reset following the Court's ruling on Defendant's pending Motion to		
9	Dismiss the Second Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6);		
10	3. Discovery related to Defendant's Rule 12(b)(1) Motion to Dismiss the Second		
11	Amended Complaint, as provided for in the Court's December 1, 2014 Protective Order (Dkt.		
12	113), shall likewise be stayed pending the resetting of the Rule 12(b)(1) Motion; and		
13	4. The Case Management Conference currently set for January 27, 2015 shall be		
14	continued to February 3, 2015 at 10:00 a.m.		
15	IT IS SO ORDERED.		
16	Dated: December 5, 2014		
17	The Honorable Vince Chhabria United States District Judge		
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	5 STIPULATION AND [PROPOSED] ORDER		
	Case No. 3:13-CV-5566-VC		

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