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11 Attorneys for Defendant Transport Workers
 12 Union of America, AFL/CIO

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 DANIEL DEMETRIS, et al.

16 Plaintiffs,

17 v.

18 TRANSPORT WORKERS UNION OF
 19 AMERICA, AFL/CIO,

20 Defendant.

) Case No. CV 13-cv-5566-VC
)
)

) **UNOPPOSED MOTION TO**
) **CONTINUE CASE MANAGEMENT**
) **CONFERENCE AND MODIFIED**
) **ORDER**

) **Civ. L.R. 6-3**
)

) Date: n/a
)

) Time: n/a
)

) Ctrm.: A
)

) Judge: Hon. Vince Chhabria
)

) **Complaint Filed: December 4, 2013**
) **Trial Date: n/a**
)
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1 Defendant Transport Workers Union of America, AFL/CIO (“Defendant”) hereby moves
2 the Court, pursuant to Civil Local Rule 6-3(a), for an order continuing the Case Management
3 Conference currently scheduled for July 11, 2014, to Tuesday, August 12, 2014, at 10 a.m.

4 Defendant requests a continuance of the Case Management Conference because its lead
5 counsel, Stephen Berzon, has a longstanding commitment to travel out of the country on July 11,
6 2014, and will be unavailable from that date until July 29, 2014. As lead counsel, Mr. Berzon
7 has full authority to make decisions about any issue that may come up during the Case
8 Management Conference, and Defendant believes that his presence at the Conference would
9 assist the Court and facilitate effective and efficient case management.

10 Defendant’s Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56(a) for Failure
11 to Exhaust Internal Union Remedies; or, Alternatively, to Dismiss First Amended Complaint
12 Pursuant to Fed. R. Civ. P. 12(b)(6) is currently set for hearing on September 4, 2014, and no
13 other deadlines have been set in this matter. Therefore, rescheduling the Case Management
14 Conference to August 12, 2014 will not affect any other scheduled deadlines. Plaintiffs do not
15 oppose Defendant’s motion to continue the Case Management Conference to August 12, 2014.

16 Defendant’s motion is based on the following facts and previous time modifications in
17 this case:

18 Plaintiffs filed and served on Defendant a complaint in the above-captioned matter on
19 December 5, 2013;

20 Pursuant to Civil Local Rule 6-1(a), the Parties previously stipulated to extend the time
21 within which Defendant must file a responsive pleading to January 27, 2014;

22 On January 23, 2014, this case was reassigned to Judge William H. Orrick;

23 In light of the reassignment of this matter, the Parties agreed to extend the time within
24 which Defendant must file a responsive pleading to February 18, 2014;

25 On February 18, 2014, TWU filed a motion to dismiss Plaintiffs’ original complaint for
26 failure to exhaust internal union remedies and failure to state a claim (Dkt. 18);

27 The Parties stipulated to allow Plaintiffs to file an amended complaint to add as a named
28 plaintiff Thomas Powell and to incorporate allegations from his complaint originally filed in the

1 Northern District of Texas in the action styled *Powell v. TWU et al.*, Case No. 3:14-cv-00375-G
2 (N.D. Tex.), and to a briefing schedule on any amended motion to dismiss by TWU;

3 At a case management conference on March 18, 2014, the Court (Judge Orrick) adopted
4 the parties' agreed upon briefing schedule for Defendant's motion to dismiss the First Amended
5 Complaint (Dkt. 31);

6 On April 17, 2014, this case was reassigned to Judge Vince Chhabria;

7 On April 30, 2014, TWU filed its response to Plaintiffs' First Amended Complaint (Dkt.
8 47). Due to an intervening Ninth Circuit en banc decision, holding that failure to exhaust union
9 remedies should be raised in an early summary judgment motion at the outset of litigation, rather
10 than in an "unenumerated Rule 12(b)" motion, TWU styled its motion as a motion for summary
11 judgment for failure to exhaust; or alternatively, to dismiss for failure to state a claim. *See*
12 *Albino v. Baca*, -- F.3d --, 2014 WL 1317141, *4, 6-7 (9th Cir. Apr. 3, 2014) (en banc);

13 On May 12, 2014, the Court set a Case Management Conference for May 30, 2014 (Dkt.
14 51);

15 On May 22, 2014, to accommodate discovery requested by Plaintiffs with respect to
16 TWU's exhaustion defense, the Parties filed a stipulation to continue the Case Management
17 Conference to June 20, 2014, to extend the briefing schedule on TWU's motion, and to continue
18 the motion hearing to September 4, 2014 (Dkt. 54);

19 On May 23, 2014, the Court granted the Parties' stipulation as modified, setting the Case
20 Management Conference for July 11, 2014, adopting the requested briefing schedule, and setting
21 the hearing on TWU's motion for September 4, 2014 (Dkt. 56);

22 No other deadlines have yet been set in this case;

23 On May 27, 2014, counsel for Defendant informed counsel for Plaintiffs that lead counsel
24 Stephen Berzon would be out of the country on July 11, 2014, and requested that Plaintiffs
25 stipulate to continue the Case Management Conference to Friday, August 1, 2014, at 10:30 a.m.
26 Counsel for Plaintiffs responded that Plaintiffs would not oppose a motion to continue the
27 conference to that date;

28 On June 9, 2014, after learning of changes in Judge Chhabria's schedule, counsel for

1 Defendant requested that Plaintiffs stipulate to continue the Case Management Conference to
2 Tuesday, August 12, 2014, at 10 a.m. Counsel for Plaintiffs responded that Plaintiffs would not
3 oppose a motion to continue the conference to that date.

4 Hence, pursuant to Civil Local Rule 6-3(a), and in the interests of effective and efficient
5 case management, Defendant TWU respectfully requests that the Court continue the Case
6 Management Conference currently set for July 11, 2014, to August 12, 2014 at 10 a.m.

7
8 Dated: June 10, 2014

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14 *forthcoming*)
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19 by: /s/ Stephen P. Berzon
Stephen P. Berzon

20 Attorneys for Defendant
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1 **DECLARATION OF STEPHEN P. BERZON IN SUPPORT OF MOTION**

2 I, Stephen P. Berzon, declare as follows:

3 1. I am a member in good standing of the bar of the State of California and am an
4 attorney for Defendant TWU in the above-captioned case. I make this declaration in support of
5 Defendant TWU's opposed motion to continue the case management conference currently set for
6 July 11, 2014. The facts set forth in this declaration I know to be true of my own personal
7 knowledge.

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

10 3. I have a long-standing commitment that requires me to travel out of the country
11 on July 11, 2014. I have airline tickets for July 11, 2014, and I will be unavailable due this pre-
12 arranged commitment from July 11, 2014 to July 29, 2014.

13 4. Pursuant to Civil Local Rule 6-1(a), the Parties previously stipulated to extend the
14 time within which Defendant must file a responsive pleading to January 27, 2014.

15 5. On January 23, 2014, this case was reassigned to Judge William H. Orrick. In
16 light of the reassignment of this matter, the Parties agreed to extend the time within which
17 Defendant must file a responsive pleading to February 18, 2014.

18 6. On February 18, 2014, TWU filed a motion to dismiss Plaintiffs' original
19 complaint for failure to exhaust internal union remedies and failure to state a claim (Dkt. 18).

20 7. The Parties stipulated to allow Plaintiffs to file an amended complaint to add as a
21 named plaintiff Thomas Powell and to incorporate allegations from his complaint originally filed
22 in the Northern District of Texas in the action styled *Powell v. TWU et al.*, Case No. 3:14-cv-
23 00375-G (N.D. Tex.), and to a briefing schedule on any amended motion to dismiss by TWU.

24 8. At a case management conference on March 18, 2014, the Court (Judge Orrick)
25 adopted the parties' agreed upon briefing schedule for Defendant's motion to dismiss the First
26 Amended Complaint as follows: motion to dismiss due April 30, 2014; opposition due June 11,
27 2014; reply due July 9, 2014; and motion hearing set for August 27, 2014 at 2:00 p.m. (Dkt. 31).

28 9. On April 17, 2014, this case was reassigned to Judge Vince Chhabria.

1 10. On April 30, 2014, TWU filed its response to Plaintiffs' First Amended
2 Complaint (Dkt. 47). Due to an intervening Ninth Circuit en banc decision, holding that failure
3 to exhaust union remedies should be raised in an early summary judgment motion at the outset of
4 litigation, rather than in an "unenumerated Rule 12(b)" motion, TWU styled its motion as a
5 motion for summary judgment for failure to exhaust; or alternatively, to dismiss for failure to
6 state a claim. See *Albino v. Baca*, -- F.3d --, 2014 WL 1317141, *4, 6-7 (9th Cir. Apr. 3, 2014)
7 (en banc).

8 11. On May 12, 2014, the Court set a Case Management Conference for May 30,
9 2014 (Dkt. 51).

10 12. On May 22, 2014, to accommodate discovery requested by Plaintiffs with respect
11 to TWU's exhaustion defense, the Parties filed a stipulation to continue the Case Management
12 Conference to June 20, 2014, to extend the brief schedule on TWU's motion, and to continue the
13 motion hearing to September 4, 2014 (Dkt. 54).

14 13. On May 23, 2014, the Court granted the Parties' stipulation as modified, setting
15 the Case Management Conference for Friday, July 11, 2014, adopting the requested briefing
16 schedule, and setting the hearing on TWU's motion for September 4, 2014 (Dkt. 56).

17 14. No other deadlines have yet been set in this case.

18 15. On May 27, 2014, Laura Trice, an attorney at my firm who is working on this
19 case, informed Plaintiffs' counsel Amy Tabor that I would be out of the country on July 11,
20 2014, and requested that Plaintiffs stipulate to continue the Case Management Conference to
21 August 1, 2014. Counsel for Plaintiffs responded that Plaintiffs would not oppose a motion to
22 continue the conference to that date.

23 16. On June 5, 2014, Ms. Trice called Judge Chhabria's Calendar Clerk to confirm
24 that Friday, August 1, 2014 was an available date for case management conferences. Ms. Trice
25 was informed that as of July 2014, Judge Chhabria would begin holding case management
26 conferences on Tuesdays at 10 a.m., and that August 5 and 12, 2014 were available dates.

27 17. On June 6, 2014, Ms. Trice informed Plaintiffs' counsel Amy Tabor of the change
28 in case management conference dates and requested that Plaintiffs stipulate to continue the Case

1 Management Conference to Tuesday, August 5, 2014, at 10 a.m. Counsel for Plaintiffs
2 responded that Plaintiffs would not oppose a motion to continue the conference to that date.

3 18. On June 9, 2014, due to an intervening matter requiring that I travel out of the
4 state on August 5, 2014, Ms. Trice requested that Plaintiffs stipulate, or agree not to oppose a
5 motion, to continue the Case Management Conference to Tuesday, August 12, 2014, at 10 a.m.
6 Counsel for Plaintiffs responded that Plaintiffs would not oppose a motion to continue the
7 conference to that date.

8 19. In light of Defendant TWU's pending motion for dismiss, which is currently set
9 for hearing on September 4, 2014, and the absence of other scheduled deadlines, continuing the
10 Case Management Conference will not affect the schedule for this case.

11 I declare under penalty of perjury that the foregoing is true and correct to the best of my
12 knowledge. Executed at San Francisco, California, on June 10, 2014.

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14 by: /s/ Stephen P. Berzon
15 Stephen P. Berzon
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[PROPOSED] MODIFIED ORDER

For good cause shown, the Court hereby grants Defendant TWU's unopposed motion to continue the Case Management Conference. The Case Management Conference currently set for July 11, 2014, and the Motion for Summary Judgment are rescheduled to September 18, 2014, at 10:00 a.m.

IT IS SO ORDERED.

Dated: June 12, 2014



The Honorable Vince Chhabria
United States District Judge