

1 SHEA LAW OFFICES
 Mary Shea Hagebols (SBN 113222) shealaw@aol.com
 2 1814 Franklin Street, Suite 800
 Oakland, CA 94612
 3 Telephone: 510-208-4422
 Facsimile: 415-520-9407

4 VAN DE POEL, LEVY & ALLEN LLP
 Jeffrey W. Allen (SBN 099240) jallen@vanlevylaw.com
 5 Nina Paul (SBN 249954) npaul@vanlevylaw.com
 6 1600 South Main Plaza, Suite 325
 Walnut Creek, CA 94596
 7 Telephone: 925-934-6102
 Facsimile: 925-934-6060

8 Attorneys for Plaintiff
 9 JANET HALEY

10 SEYFARTH SHAW LLP
 Francis J. Ortman III (SBN 213202) fortman@seyfarth.com
 11 Matthew J. Mason (SBN 271344) mmason@seyfarth.com
 560 Mission Street, 31st Floor
 12 San Francisco, California 94105
 Telephone: (415) 397-2823
 13 Facsimile: (415) 397-8549

14 Attorneys for Defendant
 COHEN & STEERS CAPITAL MANAGEMENT, INC.

15 AKIN GUMP STRAUSS HAUER & FELD LLP
 Catherine A. Conway (SBN 98366) cconway@akingump.com
 16 2029 Century Park East, Suite 2400
 17 Los Angeles, California 90067
 Telephone: (310) 229-1000
 18 Facsimile: (310) 229-1001

19 Attorneys for Defendant
 20 DAVID EDLIN

21 UNITED STATES DISTRICT COURT

22 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

23 OAKLAND

24 JANET HALEY,)	Case No. C10-03856-PJH
)	
25 Plaintiff,)	STIPULATION TO CONTINUE
)	PLAINTIFF'S MOTION TO QUASH,
26 v.)	OR ALTERNATIVELY, TO MODIFY,
)	THE THIRD PARTY SUBPOENA
27 COHEN & STEERS CAPITAL)	SERVED ON CONSTELLATION
MANAGEMENT, INC., A New York)	ENERGY GROUP, INC. AND
28 Corporation Doing Business in California; and)	SUBPOENAS/DEPOSITION NOTICES

1 DAVID EDLIN, an individual,
2 Defendants.

) **WITH DOCUMENTS REQUESTED**
) **DIRECTED TO THIRD PARTY**
) **WITNESSES CHAD FEILKE AND**
) **GREGORY KOSIER**
)
)

4
5 IT IS HEREBY STIPULATED, by and among Plaintiff JANET HALEY (“Plaintiff”),
6 Defendant COHEN & STEERS CAPITAL MANAGEMENT, INC. (“Cohen & Steers”) and
7 Defendant DAVID EDLIN (“Edlin”) (collectively the “Parties”), through their respective
8 undersigned counsel, as follows:

9 WHEREAS, Defendants served a Notice of Deposition of third party witness Gregory
10 Kosier (“Kosier”) on June 22, 2011 (and have unsuccessfully attempted to serve the
11 accompanying subpoena on Kosier) noticing the deposition of Kosier for July 20, 2011;

12 WHEREAS, Defendants served a Notice of Deposition of third party witness Chad Feilke
13 (“Feilke”) on June 23, 2011 and served the accompanying subpoena on Feilke on June 27, 2011
14 noticing the deposition of Feilke for July 22, 2011;

15 WHEREAS, Defendants served a Subpoena to Produce Documents, Information, or
16 Objects or to Permit Inspection of Premises to Constellation Energy Group, Inc. (“Constellation
17 Energy”) (Mr. Kosier’s employer) on June 27, 2011;

18 WHEREAS, Plaintiff served her Objections to Defendants’ Notice of Deposition of
19 Gregory Kosier and Request for Production of Documents on July 1, 2011;

20 WHEREAS, Plaintiff served her Objections to Defendants’ Subpoena to Produce
21 Documents, Information, or Objects or to Permit Inspection of Premises to Constellation Energy
22 Group, Inc. on July 1, 2011;

23 WHEREAS, Plaintiff subsequently filed her Motion to Quash, or Alternatively, to
24 Modify, the Third Party Subpoena Served on Constellation Energy Group, Inc. and
25 Subpoenas/Deposition Notices With Documents Requested Directed to Third Party Witnesses
26 Chad Feilke and Gregory Kosier (“Motion to Quash”) on July 6, 2011 and set a hearing date for
27 August 23, 2011;

28 WHEREAS, the deadline by which Defendants would have been required to file their

1 Opposition to Plaintiff's Motion to Quash was July 20, 2011;

2 WHEREAS, the deadline by which Plaintiff would have been required to file her Reply
3 in support of her Motion to Quash was July 27, 2011;

4 WHEREAS, the Parties have agreed to seek the services of a Special Master and/or
5 Discovery Referee to handle discovery disputes going forward;

6 WHEREAS, the Parties agree that the issues or disputes surrounding the deposition
7 notices and/or subpoenas mentioned herein will be the subject of review and decision by the
8 prospective Special Master and/or Discovery Referee;

9 WHEREAS, Defendants informed Quest Discovery Services that the order for records
10 subpoenaed from Constellation Energy should be placed on a thirty-day hold, and will not be
11 released to either party until August 13, 2011 at the earliest;

12 WHEREAS, the Parties have also contacted Constellation Energy and informed them that
13 the Motion to Quash is pending and that records need not be produced until further notice;

14 WHEREAS, the Parties have agreed to hold a Case Management Conference with the
15 Honorable Judge Phyllis J. Hamilton on August 25, 2011 to make a determination with respect to
16 appointment of a Special Master and/or Discovery Referee;

17 IT IS HEREBY STIPULATED AND AGREED by and among the Parties, through their
18 respective undersigned counsel, that Plaintiff's Motion to Quash is to be taken off calendar and
19 the hearing date for the Motion to Quash is to be continued indefinitely pending the procuring of
20 a Special Master and/or Discovery Referee who will decide the issues that are the subject of the
21 Motion to Quash, and that the Parties' respective deadlines for Defendants' brief in Opposition
22 to Plaintiff's Motion to Quash, and Plaintiff's brief in Reply to Defendants' brief in Opposition
23 be accordingly continued indefinitely;

24 IT IS HEREBY FURTHER STIPULATED AND AGREED by and among the Parties
25 that if, for any reason, a Special Master and/or Discovery Referee is not retained and/or has not
26 made a decision with respect to the issues that are the subject of the Motion to Quash on or by
27 August 13, 2011, that the Parties will contact Quest Discovery Services and ask that the order for
28 records continue to be placed on hold pending resolution of the issues with respect to the

1 subpoena for records to Constellation Energy, whether through a new hearing date for the
2 Motion to Quash, by agreement of the Parties or by later decision of the Special Master and/or
3 Discovery Referee, and will further notify Constellation Energy of the status of the Motion to
4 Quash and subpoena;

5 IT IS HEREBY FURTHER STIPULATED AND AGREED by and among the Parties
6 that, should Plaintiff's Motion to Quash be placed back on calendar and set for hearing at any
7 time, Defendants shall have seven calendar days from the date the Motion to Quash is placed
8 back on calendar to file their brief in Opposition to Plaintiff's Motion to Quash, and accordingly,
9 Plaintiff shall have seven calendar days from the deadline for Defendants' brief in Opposition to
10 Plaintiff's Motion to Quash in which to file her brief in Reply to Defendants' brief in Opposition
11 to Plaintiff's Motion to Quash, and in no instance shall the hearing for Plaintiff's Motion to
12 Quash be set earlier than seven calendar days after the deadline for Plaintiff's brief in Reply to
13 Defendants' brief in Opposition to Plaintiff's Motion to Quash.

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IT IS SO STIPULATED.

DATED: August 2, 2011

SHEA LAW OFFICES

By: /s/ Mary Shea Hagebols
Mary Shea Hagebols
Attorney for Plaintiff
JANET HALEY

DATED: August 2, 2011

VAN DE POEL, LEVY & ALLEN LLP

By: /s/ Jeffrey W. Allen
Jeffrey W. Allen
Nina Paul
Attorneys for Plaintiff
JANET HALEY

DATED: August 2, 2011

SEYFARTH SHAW LLP

By: /s/ Matthew J. Mason
Francis J. Ortman, III
Matthew J. Mason
Attorneys for Defendant
COHEN & STEERS CAPITAL
MANAGEMENT, INC.

DATED: August 2, 2011

AKIN GUMP STRAUSS HAUER & FELD
LLP

By: /s/ Catherine A. Conway
Catherine A. Conway
Attorney for Defendant
DAVID EDLIN

~~PROPOSED~~ ORDER

The parties having so stipulated, and GOOD CAUSE APPEARING THEREFORE, IT IS
HEREBY ORDERED that:

Plaintiff shall file a Notice of Motion and
Plaintiff's Motion to Quash is off calendar and ~~the hearing date for the Motion to Quash~~
Withdrawal of the motion is without prejudice to re-noticing the motion at a later date.
~~is continued indefinitely pending the procuring of a Special Master and/or Discovery Referee~~
~~who will decide the issues that are the subject of the Motion to Quash, and the Parties' respective~~
~~deadlines for Defendants' brief in Opposition to Plaintiff's Motion to Quash, and Plaintiff's brief~~
~~in Reply to Defendants' brief in Opposition are accordingly continued indefinitely;~~

If, for any reason, a Special Master and/or Discovery Referee is not retained and/or has
not made a decision with respect to the issues that are the subject of the Motion to Quash on or
by August 13, 2011, the Parties will contact Quest Discovery Services and ask that the order for
records continue to be placed on hold pending resolution of the issues with respect to the
subpoena for records to Constellation Energy, whether through a new hearing date for the
Motion to Quash, by agreement of the Parties or by later decision of the Special Master and/or
Discovery Referee, and further notify Constellation Energy of the status of the Motion to Quash
and/or subpoena;

Should Plaintiff's Motion to Quash be ~~placed back on calendar~~ ^{re-filed} and set for hearing at any
time, Defendants shall have seven calendar days from the date the Motion to Quash is ~~placed~~ ^{re-filed}
~~back on calendar~~ to file their brief in Opposition to Plaintiff's Motion to Quash, and accordingly,
Plaintiff shall have seven calendar days from the deadline for Defendants' brief in Opposition to
Plaintiff's Motion to Quash in which to file her brief in Reply to Defendants' brief in Opposition
to Plaintiff's Motion to Quash, and in no instance shall the hearing for Plaintiff's Motion to
Quash be set earlier than seven calendar days after the deadline for Plaintiff's brief in Reply to
Defendants' brief in Opposition to Plaintiff's Motion to Quash.

IT IS SO ORDERED.

DATED: August 3, 2011


MAGISTRATE JUDGE ELIZABETH D. LAPORTE
UNITED STATES DISTRICT COURT