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& GMC Truck, Earl L. Enns & Esther Enns  
8 as Trustees of the 2004 Enns Family Trust,  
Harold J. Enns & Patricia L. Enns as Trustees  
9 for the Family Trust

10 UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF CALIFORNIA  
12

13 ENNS PONTIAC, BUICK, & GMC  
14 TRUCK, *et al.*;

15 Plaintiffs,

16 v.

17 ORELIA FLORES, *et al.*;

18 Defendants,  
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24 AND RELATED ACTIONS.  
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**NO: 1:07-CV-01043-LJO-BAM**

**STIPULATION AND ORDER  
REGARDING CONTINUANCE  
OF SCHEDULING ORDER  
DEADLINES DUE TO  
ADDITION OF NEW PARTIES,  
NEW COUNTER-CLAIMS, NEW  
CROSS-CLAIMS, AND NEED  
FOR SETTLEMENT  
DISCUSSIONS**

Date: TBD  
Time: TBD  
Courtroom: 3  
Judge: Honorable Lawrence J. O'Neill

1 The parties to this matter, by and through their undersigned counsel, stipulate to  
2 the following joint request to the Court that it continue the Scheduling Order  
3 deadlines for approximately nine (9) months as set forth in the proposed schedule  
4 below.

5 **I. UNDERLYING ACTION**

6 The present action is a complex case arising under, *inter alia*, the  
7 Comprehensive Environmental Response, Compensation and Liability Act of 1980,  
8 as amended by the Superfund Amendments & Reauthorization Act of 1986, 42  
9 United States Code Sections 9601 *et seq.* (“CERCLA”). The underlying dispute  
10 between Plaintiffs/Counter-Defendants Enns Pontiac, Buick, & GMC Truck, Earl L.  
11 Enns and Esther J. Enns; and Harold J. Enns and Patricia L. Enns (“Enns”), and  
12 Defendants, John Pearce (“Pearce”), Louis and Patsy Martinez (“Martinezes”),  
13 Patricia Clothier and Carolyn Whitesides, as Administrators to the Estate of Mabel  
14 Lee, the Estate of Mabel Lee, Deceased, Reedley Steam Laundry, and Reedley Dry  
15 Cleaning Works (collectively, the “Lees”), and Sachiko Yamaguchi, as administrator  
16 to the Estate of Sieto Yamaguchi, and the Estate of Sieto Yamaguchi, deceased  
17 (collectively, the “Yamaguchis”), involves claims related to the source, nature and  
18 extent of alleged contamination underlying and/or surrounding three or more  
19 properties located on G Street in Reedley, California, including 1307, 1319, and  
20 1340 G Street, Reedley, California (“G Street Properties”). The case involves  
21 private parties, many of whom are elderly and without significant resources, and a  
22 relevant time period that spans multiple decades dating back to the 1960s. Prior  
23 businesses at 1319 and 1340 G Street in Reedley, California include dry cleaning  
24 operations. A prior business at 1307 G Street, Reedley, CA 93654 included an  
25 automobile dealership with an automotive repair shop. Contamination allegedly  
26 existed and/or exists beneath the G Street Properties and surrounding areas. Other  
27 dry cleaning, automotive, and/or industrial businesses in the area may also be  
28 contributing to contamination in and around the G Street Properties.

## **II. STATUS OF THE PLEADINGS AND UPCOMING DEADLINES**

New parties were added to this litigation pursuant to the Court's May 2, 2011 Order. (*See* Docket No. 161). Some of these new parties still need to make FRCP Rule 26 initial disclosures. On or about September 22, 2011, the Lees and Sachiko Yamaguchi, as administrator to the Estate of Sieto Yamaguchi each filed counterclaims and cross-claims against the parties in this case, as required by the Court's August 30, 2011, Memorandum Decision and Order Re Defendants' Motions to Dismiss Second Amended Complaint. (*See* Docket Nos. 250, 259, 260, 263). In addition, on or about October 13, 2011, John Pearce filed counterclaims and cross-claims against the parties in this case. (*See* Docket Nos. 286, 287). The responses to these newly-asserted claims have not yet been filed. However, under the current Scheduling Order (discussed in more detail, below), expert witness disclosures pursuant to Rule 26 of the Federal Rules of Civil Procedure ("FRCP") are due on November 1, 2011. (*See* Docket No. 207). This leaves the parties insufficient time to answer and evaluate the new claims, retain additional experts (if necessary), and have expert reports prepared in time to meet the disclosure deadline.

## **III. SITE INVESTIGATION AND SETTLEMENT STATUS**

Ongoing testing and characterization work is being conducted beneath the G Street Properties and surrounding areas to determine the nature and extent of alleged contamination, and to identify the appropriate remedial approach. Enns has conducted multiple rounds of testing and installed additional monitoring wells in an attempt to understand and evaluate the full extent of the contamination in and around the G Street Properties. Multiple rounds of soil vapor testing have been conducted by defendant John Pearce. Additional sampling and analysis must be completed before the alleged contamination can be fully characterized and before an appropriate remedy may be proposed to the Central Valley Regional Water Quality Control Board, which has oversight and approval authority over the investigation and remedy selection. However, with the completion of the most recent

1 characterization efforts in August 2011, the parties believe they will have sufficient  
2 information to pursue productive settlement negotiations soon after the pleadings are  
3 closed. Doing so before significant additional expenditures are incurred on further  
4 site investigation work and expert discovery will preserve resources for settlement,  
5 and increase the likely success of the parties' settlement negotiations. As discussed  
6 further below, the parties' intention to pursue settlement negotiations is one of the  
7 bases for the request for a continuance.

#### 8 **IV. DISCOVERY STATUS**

9 The non-expert discovery deadline passed on June 3, 2011. Expert disclosures  
10 pursuant to FRCP 26(a)(2), (A) and (B) are scheduled to occur on November 1,  
11 2011. (*See* Docket No. 207). This stipulation proposes to extend that (and other)  
12 deadline(s), as explained below.

#### 13 **V. GOOD CAUSE EXISTS FOR THE CONTINUANCE OF THE** 14 **SCHEDULING ORDER DEADLINES**

15 Scheduling orders entered before the final pretrial conference may be  
16 modified upon a showing of "good cause." Hannon v. Chater, 887 F.Supp. 1303  
17 (N.D.Cal. 1995); FRCP 16(b)(4). The reason for the "good cause" requirement for  
18 modification of a court's scheduling order is that such orders and their enforcement  
19 are regarded as an essential mechanism for cases becoming trial-ready in an  
20 efficient, just, and certain manner. Rouse v. Farmers State Bank of Jewell, Iowa,  
21 866 F.Supp. 1191 (N.D.Iowa 1994). With this understanding in mind, the parties  
22 believe "good cause" is present to support the need for an extension of the case  
23 deadlines.

24 On June 16, 2011 the Honorable Judge Oliver W. Wanger issued an Order  
25 Granting Plaintiffs' Motion for Continuance of Scheduling Order Deadlines which  
26 provided amended case deadlines. (*See* Docket No. 207). The dates the Court set  
27 were as follows:  
28

<u><b>Deadline/Event</b></u>	<u><b>Old Date</b></u>
Non-Expert Discovery Cut-off	June 3, 2011
Expert Witness Disclosures pursuant to FRCP 26(a)(2), (A) and (B)	November 1, 2011
Expert Rebuttal Disclosure and Expert Supplement Deadline pursuant to FRCP 26 (a)(2)(E) and (C), and FRCP 26(e)(2)	December 1, 2011
Discovery Cut-Off (including experts)	January 3, 2012
Non-Dispositive Pre-Trial Motions (including discovery motions)	January 18, 2012 (filed) February 24, 2012 (heard)
Dispositive Pre-Trial Motions	February 3, 2012 (filed) March 5, 2012 (heard)
Settlement Conference	
Pre-Trial Conference Date	April 9, 2012

The parties agree that all remaining unexpired deadlines need to be revised in order to allow the parties to attempt and complete good faith settlement negotiations, to evaluate and address new claims recently filed in this lawsuit, and, if necessary, engage in expert discovery and fully prepare for trial if settlement negotiations fail. These bases provide good cause to extend the scheduling deadlines by approximately nine (9) months.

**A. Additional Time Is Necessary To Complete The Parties' Expert Reports**

New parties were added to this litigation pursuant to the Court's May 2, 2011 Order. (*See* Docket No. 161). Some of the new parties still need to make FRCP Rule 26 initial disclosures. On September 22, 2011, the Lees and Sachiko Yamaguchi, as administrator to the Estate of Sieto Yamaguchi each filed counterclaims and cross claims against the parties in this case, as required by the Court's August 30, 2011, Memorandum Decision and Order Re Defendants' Motions to Dismiss Second Amended Complaint. (*See* Docket Nos. 250, 259, 260, 263). These counterclaims

1 and cross claims were filed approximately forty (40) days prior to the expert witness  
2 disclosures pursuant to FRCP 26(a)(2), (A) and (B). In addition, Pearce filed cross-  
3 claims and counterclaims, against the Lees and Enns. (*See* Docket Nos. 286, 287).  
4 Pearce's counterclaims and cross-claims were filed on October 13, 2011,  
5 approximately nineteen (19) days prior to the expert witness disclosures pursuant to  
6 FRCP 26(a)(2), (A) and (B). As a result, all parties subject to the new claims require  
7 time to answer, evaluate, and assess the new claims for preparation of the expert  
8 reports due within a month. Some parties believe that additional experts may need to  
9 be hired to address issues relating to the new claims.

10 **B. Additional Time Is Necessary To Attempt Settlement Negotiations**

11 Good cause also exists to continue the deadlines so the parties can enter into  
12 and complete settlement negotiations.

13 Subsequent to the recent characterization efforts, testing results, and updated  
14 remediation costs estimates all provided in August 2011, the parties have  
15 preliminarily discussed entering into settlement negotiations after the next round of  
16 pleadings are filed. The parties believe that a continuance may allow them to avoid  
17 significant litigation costs, including additional expert report preparation and pre-  
18 trial preparation costs, and increase the likely success of the parties' settlement  
19 negotiations.

20 **VI. NEW PROPOSED DATES**

21 As shown in the previous section, the current schedule of deadlines needs to  
22 be revised such that the parties can adequately prepare for expert witness disclosures  
23 due within a month and to engage in settlement negotiations and ultimate case  
24 resolution. Accordingly, the parties agree that the deadlines in this case should be  
25 revised to reflect the dates shown in the chart below:

<u><b>Deadline/Event</b></u>	<u><b>Old Date</b></u>	<u><b>New Date</b></u>
Non-Expert Discovery Cut-off	June 3, 2011	June 3, 2011 <sup>1</sup>
Expert Witness Disclosures pursuant to FRCP 26(a)(2), (A) and (B)	November 1, 2011	August 1, 2012
Expert Rebuttal Disclosure and Expert Supplement Deadline pursuant to FRCP 26 (a)(2)(E) and (C), and FRCP 26(e)(2)	December 1, 2011	August 31, 2012
Discovery Cut-Off (including experts)	January 3, 2012	October 3, 2012
Non-Dispositive Pre-Trial Motions (including discovery motions)	January 18, 2012 (filed) February 24, 2012 (heard)	October 18, 2012 (filed) November 26, 2012 (heard)
Dispositive Pre-Trial Motions	February 3, 2012 (filed) March 5, 2012 (heard)	November 5, 2012 (filed) December 10, 2012 (heard)
Settlement Conference		<b>Parties to contact U.S. Magistrate Judge McAuliffe for date</b>
Pre-Trial Conference Date	April 9, 2012	<b>January 29, 2013 at 8:30 a.m. in Dept. 4</b>
Trial Date	May 22, 2012	<b>March 12, 2013 at 8:30 a.m. in Dept. 4</b>

## **VII. CONCLUSION**

The parties agree that the remaining unexpired deadlines need to be revised in order to allow the parties time to file responsive pleadings, adequately prepare for expert witness disclosures, due within a month, and to engage in settlement negotiations. Accordingly, good cause exists to continue the Scheduling Order Deadlines as set forth above. The parties respectfully request that the Court approve the parties' proposed schedule.

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<sup>1</sup> Parties reserve their right to seek leave from the court to conduct additional discovery based on the newly filed claims. Some parties might oppose such a request, if filed.

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DATED: October 17, 2011

CAUFIELD & JAMES LLP

/s/ Jeffery Caufield  
Jeffery L. Caufield, Esq.  
Matthew Friedrichs, Esq.  
Attorney for Plaintiffs/Counter-  
Defendants

DATED: October 17, 2011

THE CRONIN LAW GROUP

/s/ Dennis Byrne  
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Dennis J. Byrne, Esq.  
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PATRICIA CLOTHER AND  
CAROLYN WHITESIDES, as  
Administrators to the ESTATE OF  
MABEL LEE, THE ESTATE OF  
MABEL LEE, deceased, REEDLEY  
STEAM LAUNDRY and REEDLEY  
DRY CLEANING WORKS

DATED: October 17, 2011

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administrator to THE ESTATE OF  
SIETO YAMAGUCHI and  
THE ESTATE OF SIETO  
YAMAGUCHI, deceased



1  
2 DATED: October 17, 2011

LAW OFFICES OF KATHLEEN CLACK

3  
4 /s/ Kathleen Clack  
Kathleen Clack, Esq.  
5 Attorneys for Defendant,  
6 JOHN PEARCE  
7  
8  
9

10 DATED: October 17, 2011

11  
12 /s/ Louis Martinez  
LOUIS MARTINEZ  
13  
14

15 DATED: October 17, 2011

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17 /s/ Patsy Martinez  
PATSY MARTINEZ  
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19 Good cause appearing therefore, IT IS SO ORDERED that the Scheduling  
20 Order Deadlines be continued as set forth above, including dates appearing in **bold**  
21 which are different than those proposed by the parties.  
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24 IT IS SO ORDERED.

25 Dated: October 21, 2011

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE  
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