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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 IN ORDER TO
ATTEND FURTHER
MEDIATION**

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 one hundred eighty (180) days as set forth in the
4 proposed schedule 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.

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

2 New parties were added to this litigation pursuant to the Court’s May 2, 2011
3 Order. (*See* Docket No. 161). On or about September 22, 2011, the Lees and
4 Sachiko Yamaguchi, as administrator to the Estate of Sieto Yamaguchi, each filed
5 counterclaims and cross-claims against the parties in this case following the Court’s
6 August 30, 2011, Memorandum Decision and Order Re Defendants’ Motions to
7 Dismiss Second Amended Complaint. (*See* Docket Nos. 250, 259, 260, 263). In
8 addition, on or about October 13, 2011, John Pearce filed counterclaims and cross-
9 claims against the parties in this case. (*See* Docket Nos. 286, 287). The responses to
10 all newly-asserted claims have been filed.

11 Under the current Scheduling Order, expert witness disclosures pursuant to
12 Rule 26 of the Federal Rules of Civil Procedure (“FRCP”) are due on October 30,
13 2012. (*See* Docket No. 397). Parties participated in a mediation on September 19,
14 2012. As a result of the mediation it was agreed that further site characterization and
15 testing would take place. After additional characterization is completed all parties
16 have agreed to conduct an additional day of mediation in January 2013. As a result,
17 parties are requesting to extend all deadlines as detailed below.

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

19 Ongoing testing and characterization work is being conducted beneath the G
20 Street Properties and surrounding areas to determine the nature and extent of alleged
21 contamination, and to identify the appropriate remedial approach. Enns has
22 conducted multiple rounds of testing and installed additional monitoring wells in an
23 attempt to understand and evaluate the full extent of the contamination in and around
24 the G Street Properties. Multiple rounds of soil vapor testing have been conducted
25 by defendant John Pearce. The parties participated in mediation on September 19,
26 2012. During the mediation it was agreed that additional site characterization would
27 go forward to help substantiate information that will help to facilitate further
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1 settlement discussions. As discussed further below, the parties' intention to pursue
2 further settlement negotiations is the basis for the request for a continuance.

3 **IV. DISCOVERY STATUS**

4 Expert disclosures pursuant to FRCP 26(a)(2), (A) and (B) are scheduled to
5 occur on October 30, 2012. (See Docket No. 397). This stipulation proposes to
6 extend that (and other) deadline(s), as explained below.

7 **V. GOOD CAUSE EXISTS FOR THE CONTINUANCE OF THE**
8 **SCHEDULING ORDER DEADLINES**

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

18 On July 24, 2012 the Honorable District Court Judge Lawrence J. O'Neill
19 issued an Order granting the Stipulation And Order Regarding Continuance Of
20 Scheduling Order Deadlines In Order to Attend Scheduled Mediation which
21 provided amended case deadlines. (See Docket No. 397). The dates the Court set
22 were as follows:

<u>Deadline/Event</u>	<u>Old Date</u>
Non-Expert Discovery Cut-off	June 3, 2011
Expert Witness Disclosures pursuant to FRCP 26(a)(2), (A) and (B)	October 30, 2012
Expert Rebuttal Disclosure and Expert Supplement Deadline pursuant to FRCP 26 (a)(2)(E) and (C), and FRCP 26(e)(2)	November 29, 2012

<u>Deadline/Event</u>	<u>Old Date</u>
Discovery Cut-Off (including experts)	January 2, 2013
Non-Dispositive Pre-Trial Motions (including discovery motions)	January 16, 2013 (filed) February 25, 2013 (heard)
Dispositive Pre-Trial Motions	February 4, 2013 (filed) March 11, 2013 (heard)
Settlement Conference	Parties to contact U.S. Magistrate Judge McAuliffe for date
Pre-Trial Conference Date	April 29, 2013
Trial Date	July 23, 2013

The parties agree that all remaining unexpired deadlines need to be revised in order to allow the parties to conduct additional characterization, to attempt and complete good faith settlement negotiations which have been tentatively scheduled, 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 one hundred eighty (180) days.

A. Additional Time Is Necessary To Attend Settlement Negotiations

Good cause exists to continue the deadlines so that all parties can attend additional mediation which has been tentatively scheduled for January 2013. During the parties' first day of mediation it was agreed that additional site characterization and testing should go forward to aid the settlement process. During the mediation the parties agreed to the following dates and events:

- September 28 – Parties will prepare a Stipulation to continue all litigation dates, including a declaration for Mr. Levy to sign recommending the extension.
- October 3 – Conference call with relevant parties about insurance issues including potential retention of insurance archeologists.
- October 10 – Plaintiff will provide a draft work plan to defendants for comment.

- 1 • October 15 – Defendants will provide their comments, if any.
- 2 • October 19 – Plaintiff will submit its work plan to the Water Board.
- 3 • December 1 – Parties will use their best efforts to complete mediation-related
- 4 testing.
- 5 • December or week of January 7th – Parties to return to mediation.
- 6 (Declaration of Lester J. Levy at ¶ 3)

7 As detailed, it was agreed that once additional site characterization and testing
 8 were completed, parties would return for an additional day of mediation. As during
 9 the September 19, 2012 mediation, all parties with full settlement authority including
 10 but not limited to insurance carriers will be present and/or available by telephone at
 11 the additional day of mediation.

12 The parties believe that the new information obtained from additional testing
 13 will improve the parties’ understanding of their liability, thereby increasing the
 14 likelihood of successful mediation and settlement. Thus, the parties seek a six
 15 month continuance of all dates in order to avoid significant litigation costs, including
 16 additional expert report preparation, discovery, and pre-trial preparation costs, while
 17 they conduct additional testing and actively engage in productive mediation.

18 **VI. NEW PROPOSED DATES**

19 As shown in the previous section, the current schedule of deadlines needs to
 20 be revised such that the parties can attend additional mediation prior to expert
 21 witness disclosures due in October. Accordingly, the parties agree that the deadlines
 22 in this case should be revised to reflect the dates shown in the chart below:

<u>Deadline/Event</u>	<u>Old Date</u>	<u>New Date</u>
Non-Expert Discovery Cut-off	June 3, 2011	June 3, 2011
Expert Witness Disclosures pursuant to FRCP 26(a)(2), (A) and (B)	October 30, 2012	April 29, 2013

<u>Deadline/Event</u>	<u>Old Date</u>	<u>New Date</u>
Expert Rebuttal Disclosure and Expert Supplement Deadline pursuant to FRCP 26 (a)(2)(E) and (C), and FRCP 26(e)(2)	November 29, 2012	May 28, 2013
Discovery Cut-Off (including experts)	January 2, 2013	July 1, 2013
Non-Dispositive Pre-Trial Motions (including discovery motions)	January 16, 2013 (filed) February 25, 2013 (heard)	July 15, 2013 (filed) August 26, 2013(heard)
Dispositive Pre-Trial Motions	February 4, 2013 (filed) March 11, 2013 (heard)	August 5, 2013(filed) September 6, 2013(heard)
Settlement Conference	Parties to contact U.S. Magistrate Judge McAuliffe for date	Parties to contact U.S. Magistrate Judge McAuliffe for date
Pre-Trial Conference Date	April 29, 2013	October 25, 2013
Trial Date	July 23, 2013	January 20, 2014

VII. CONCLUSION

The parties agree that the remaining unexpired deadlines need to be revised in order to allow the parties to conduct further site characterization which will help with additional mediation tentatively scheduled for January 2013, before having to prepare for expert witness disclosures. 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.

DATED: September 28, 2012

CAUFIELD & JAMES LLP

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

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DATED: September 28, 2012

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
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STEAM LAUNDRY and REEDLEY
DRY CLEANING WORKS

DATED: September 28, 2012

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THE ESTATE OF SIETO
YAMAGUCHI, deceased

DATED: September 28, 2012

LAW OFFICES OF KATHLEEN CLACK

/s/ Kathleen Clack
Kathleen Clack, Esq.
Attorneys for Defendant,
JOHN PEARCE

DATED: September 28, 2012

/s/ Louis Martinez
LOUIS MARTINEZ

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DATED: September 28, 2012

/s/ Patsy Martinez
PATSY MARTINEZ

Good cause appearing therefore, IT IS SO ORDERED that the Scheduling Order Deadlines be continued as set forth above, so parties can attend additional mediation in January 2013. All parties, adjusters/carriers for insured parties, and other representatives of a party having full and complete authority to enter into binding settlement, and the principal attorneys responsible for the litigation, must be present at the mediation. Full authority to settle means that the individuals at the mediation be authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties.

This Court will grant no further extensions of dates in the absence of absolute good cause to do so.

IT IS SO ORDERED.

Dated: October 1, 2012

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