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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**

New Trial Date: April 22, 2014

Time: 8:30am

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 ninety (90) days 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.

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 April 29,
13 2013. (*See* Docket No. 400). 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. Additional characterization and testing took place in
16 February and March 2013 and final reports regarding the additional work should be
17 available within the next thirty (30) days. Parties have agreed to conduct an
18 additional day of mediation in May or early June. Parties are requesting to extend all
19 deadlines as detailed below.

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

21 Ongoing testing and characterization work is being conducted beneath the G
22 Street Properties and surrounding areas to determine the nature and extent of alleged
23 contamination, and to identify the appropriate remedial approach. Enns has
24 conducted multiple rounds of testing and installed additional monitoring wells in an
25 attempt to understand and evaluate the full extent of the contamination in and around
26 the G Street Properties. In December 2012 Enns installed an additional deep multi-
27 channel groundwater monitoring well. This new well was drilled to a depth of
28 approximately 153 feet. Four depth-discrete groundwater monitoring wells were

1 installed within this well at 70, 98, 118, and 138 feet bsg. The report for that work
2 was finalized and submitted to the California Regional Water Quality Control board
3 on January 23, 2013. After development of the new deep multi-channel well, Enns
4 conducted additional groundwater sampling in late February and the report should be
5 finalized and submitted within the next thirty (30) days. John Pearce conducted soil
6 vapor sampling from temporary soil vapor points. Pearce also conducted additional
7 work in February 2013 and installed multiple permanent soil vapor wells. Those
8 wells were recently tested in early March and the report for the well installations and
9 testing is not yet complete. Pearce's report should be finalized and submitted within
10 the next month. The parties participated in mediation on September 19, 2012.
11 During the mediation it was agreed that additional site characterization would go
12 forward, and it did go forward as described above. The additional work will help
13 substantiate information that will help to facilitate further settlement discussions. As
14 detailed, results from the additional work performed by multiple parties are currently
15 being finalized and should be available within the next thirty (30) days. The
16 additional analytical results will be used during the additional mediation. As
17 discussed further below, the parties' intention to pursue further settlement
18 negotiations is the basis for the request for a continuance.

19 **IV. DISCOVERY STATUS**

20 Expert disclosures pursuant to FRCP 26(a)(2), (A) and (B) are scheduled to
21 occur on April 29, 2013. (*See* Docket No. 400). This stipulation proposes to extend
22 that (and other) deadline(s), as explained below.

23 **V. GOOD CAUSE EXISTS FOR THE CONTINUANCE OF THE**
24 **SCHEDULING ORDER DEADLINES**

25 Scheduling orders entered before the final pretrial conference may be
26 modified upon a showing of "good cause." *Hannon v. Chater*, 887 F.Supp. 1303
27 (N.D.Cal. 1995); FRCP 16(b)(4). The reason for the "good cause" requirement for
28 modification of a court's scheduling order is that such orders and their enforcement

1 are regarded as an essential mechanism for cases becoming trial-ready in an
 2 efficient, just, and certain manner. Rouse v. Farmers State Bank of Jewell, Iowa,
 3 866 F.Supp. 1191 (N.D.Iowa 1994). With this understanding in mind, the parties
 4 believe “good cause” is present to support the need for an extension of the case
 5 deadlines.

6 On October 1, 2012 the Honorable District Court Judge Lawrence J. O’Neill
 7 issued an Order granting the Stipulation And Order Regarding Continuance Of
 8 Scheduling Order Deadlines In Order to Attend Further Mediation which provided
 9 amended case deadlines. (*See* Docket No. 400). The dates the Court set were as
 10 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)	April 29, 2013
Expert Rebuttal Disclosure and Expert Supplement Deadline pursuant to FRCP 26 (a)(2)(E) and (C), and FRCP 26(e)(2)	May 28, 2013
Discovery Cut-Off (including experts)	July 1, 2013
Non-Dispositive Pre-Trial Motions (including discovery motions)	July 15, 2013 (filed) August 26, 2013 (heard)
Dispositive Pre-Trial Motions	August 5, 2013 (filed) September 6, 2013 (heard)
Settlement Conference	Parties to contact U.S. Magistrate Judge McAuliffe for date
Pre-Trial Conference Date	October 25, 2013
Trial Date	January 20, 2014

25 The parties agree that all remaining unexpired deadlines need to be revised in
 26 order to allow the parties to finalize results from recent characterization efforts,
 27 conduct additional research regarding insurance, and to attempt and complete good
 28 faith settlement negotiations which have been tentatively scheduled, and, if

1 necessary, engage in expert discovery and fully prepare for trial if settlement
2 negotiations fail. These bases provide good cause to extend the scheduling deadlines
3 by approximately ninety (90) days.

4 **A. Additional Time Is Necessary To Attend Settlement Negotiations**

5 Good cause exists to continue the deadlines so that all parties can maximize
6 the additional mediation opportunity which has been tentatively scheduled for May
7 or early June 2013. During the parties' first day of mediation, it became apparent
8 that the parties lacked sufficient agreement regarding site conditions. This lack of
9 shared understanding impeded settlement because the parties could not agree on the
10 scope of the problem, the appropriate methods for resolving the problems, and the
11 costs of doing so. The parties agreed that additional site characterization and testing
12 should go forward to enhance the settlement process. During the mediation the
13 parties agreed to the following dates and events:

- 14 • September 28 – Parties will prepare a Stipulation to continue all litigation
15 dates, including a declaration for Mr. Levy to sign recommending the
16 extension.
- 17 • October 3 – Conference call with relevant parties about insurance issues
18 including potential retention of insurance archeologists.
- 19 • October 10 – Plaintiff will provide a draft work plan to defendants for
20 comment.
- 21 • October 15 – Defendants will provide their comments, if any.
- 22 • October 19 – Plaintiff will submit its work plan to the Water Board.
- 23 • December 1 – Parties will use their best efforts to complete mediation-related
24 testing.
- 25 • December or week of January 7th – Parties to return to mediation.

26 (Declaration of Lester J. Levy at ¶ 3)

27 As detailed, it was agreed that once additional site characterization and testing
28 were completed, parties would return for an additional day of mediation. The

1 characterization efforts have taken longer than anticipated, so parties have not yet
2 received final results nor returned to mediation. Although additional mediation has
3 not taken place, Parties have had multiple joint teleconferences with the mediator
4 discussing this matter and progress towards potential settlement (Declaration of
5 Lester J. Levy at ¶ 4). Currently, the final reports for the additional characterization
6 and testing have not been completed. The completion of these reports is crucial to
7 the additional mediation and they should be completed within the next 30 days.
8 (Declaration of Lester J. Levy at ¶ 5).

9 Moreover, during the September 19, 2012 mediation the parties discussed
10 hiring a forensic insurance investigator in an attempt to locate all insurance that
11 could potentially provide coverage in this case. (Declaration of Lester J. Levy at ¶
12 6). Certain parties have hired a forensic investigator and have been conducting
13 additional searches for insurance coverage. *Id.* These additional searches are not yet
14 complete. *Id.* Parties want to make sure all insurance coverage has been determined
15 and that all Parties and insurance carriers are at the next mediation. Having ALL
16 insurance carriers at the additional mediation will further aid settlement negotiations.
17 As these searches are not yet complete, additional good cause exists to extend the
18 deadlines, which will allow the searches to be finished, and then allow parties to
19 return to mediation confidently.

20 As with the September 19, 2012 mediation, all parties with full settlement
21 authority including but not limited to insurance carriers will be present at the
22 additional day of mediation, unless excused by the mediator.

23 In sum, the parties believe that the new information obtained from the
24 additional insurance searches and additional testing will improve the parties'
25 understanding of coverage and their liability, thereby maximizing the likelihood of
26 successful mediation and settlement. In addition, if the mediation is unsuccessful
27 then Parties will have time to prepare for expert disclosures without having to
28 request additional leave from the Court. Thus, the parties seek a ninety (90) day

1 continuance of all dates in order to avoid significant litigation costs, including
 2 additional expert report preparation, discovery, and pre-trial preparation costs, while
 3 they conduct additional insurance research, finalize testing results, and actively
 4 engage in productive mediation.

5 **VI. NEW PROPOSED DATES**

6 As shown in the previous section, the current schedule of deadlines needs to
 7 be revised such that the parties can attend additional mediation prior to expert
 8 witness disclosures due in April. Accordingly, the parties agree that the deadlines in
 9 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)	April 29, 2013	July 29, 2013
Expert Rebuttal Disclosure and Expert Supplement Deadline pursuant to FRCP 26 (a)(2)(E) and (C), and FRCP 26(e)(2)	May 28, 2013	August 26, 2013
Discovery Cut-Off (including experts)	July 1, 2013	September 30, 2013
Non-Dispositive Pre-Trial Motions (including discovery motions)	July 15, 2013 (filed) August 26, 2013 (heard)	October 14, 2013 (filed) November 25, 2013 (heard)
Dispositive Pre-Trial Motions	August 5, 2013 (filed) September 6, 2013 (heard)	November 4, 2013 (filed) December 5, 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	October 25, 2013	January 23, 2014
Trial Date	January 20, 2014	April 20, 2014

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DATED: March 29, 2013

DOWNEY BRAND LLP

 /s/ Gregory Broderick
Gregory Broderick, Esq.
Attorneys for Defendants,
SACHIKO YAMAGUCHI, as
administrator to THE ESTATE OF
SIETO YAMAGUCHI and
THE ESTATE OF SIETO
YAMAGUCHI, deceased

DATED: March 29, 2013

LAW OFFICES OF KATHLEEN CLACK

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

DATED: March 29, 2013

 /s/ Louis Martinez
LOUIS MARTINEZ

DATED: March 29, 2013

 /s/ Patsy Martinez
PATSY MARTINEZ

ORDER

The Court, having considered the stipulation, finds good cause exists to modify the current scheduling order deadlines.

Good cause appearing therefore, IT IS SO ORDERED that the Scheduling Order Deadlines be continued as set forth below, so parties can attend additional mediation in May or early June 2013.

<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	April 29, 2013	July 29, 2013
Expert Rebuttal Disclosure and Expert Supplement Deadline	May 28, 2013	August 26, 2013
Expert Discovery Cut-Off (including discovery motions) ¹	July 1, 2013	October 14, 2013
Dispositive Pre-Trial Motions	August 5, 2013 September 6, 2013	November 4, 2013 (filed) December 5, 2013 (heard)
Settlement Conference	Not set.	Not set.
Pre-Trial Conference Date	October 25, 2013	January 23, 2014
Trial Date	January 20, 2014	April 22, 2014

IT IS FURTHER ORDERED that 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, unless excused by the mediator. Full authority to settle

¹ Compliance with these discovery cutoffs requires motions to compel be filed *and heard* sufficiently in advance of the cutoff so that the Court may grant effective relief within the allotted discovery time. A parties' failure to have a discovery dispute heard sufficiently in advance of the discovery cutoff may result in denial of the motion as untimely.

1 means that the individuals at the mediation be authorized to fully explore settlement
2 options and to agree at that time to any settlement terms acceptable to the parties.

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IT IS SO ORDERED.

Dated: April 2, 2013

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE