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7 Attorneys for Plaintiffs Enns Pontiac, Buick,
& 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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NO: 1:07-CV-01043-LJO-BAM

**JOINT STIPULATION AND
ORDER REGARDING PARTIES'
REQUEST TO VACATE
REMAINING SCHEDULING
ORDER DEADLINES IN ORDER
TO FINALIZE SETTLEMENT
AND SETTING SETTLEMENT
CONFERENCE**

Settlement Conference

Date: April 29, 2014

Time: 10:00 am

Department 8 (BAM)

26 AND RELATED ACTIONS.
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1 Pursuant to the Court’s March 13, 2014 Order, the parties to this matter, by and
2 through their undersigned counsel, stipulate to the following joint request to the
3 Court that it vacate the unexpired Scheduling Order deadlines and schedule a
4 mandatory settlement conference.

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 Constance and Dana K. Yamaguchi,
16 as administrators to the Estate of Sieto Yamaguchi, Sachiko Yamaguchi, deceased,
17 as former administrator to the Estate of Sieto Yamaguchi, and the Estate of Sieto
18 Yamaguchi, deceased (collectively, the “Yamaguchis”), involves claims related to
19 the source, nature and extent of alleged contamination underlying and/or
20 surrounding three or more properties located on G Street in Reedley, California,
21 including 1307, 1319, and 1340 G Street, Reedley, California (“G Street
22 Properties”). The case involves private parties, many of whom are elderly and
23 without significant resources, and a relevant time period that spans multiple decades
24 dating back to the 1960s. Prior businesses at 1319 and 1340 G Street in Reedley,
25 California include dry cleaning operations. A prior business at 1307 G Street,
26 Reedley, CA 93654 included an automobile dealership with an automotive repair
27 shop. Contamination allegedly existed and/or exists beneath the G Street Properties
28 and surrounding areas. Other dry cleaning, automotive, and/or industrial businesses

1 in the area may also be contributing to contamination in and around the G Street
2 Properties.

3 **II. PARTIES HAVE REACHED A SETTLEMENT IN PRINCIPLE**

4 **a. A Global Settlement in Principle Has Been Reached But**
5 **Various Tasks Need to be Accomplished**

6 As detailed in our March 12, 2014 Joint Status Report, based on the January
7 24, 2014 mediation and subsequent communications between the parties, a global
8 settlement of this case has been reached in principle. Parties and insurance carriers
9 have agreed to certain amounts to be paid as part of the settlement of all claims and
10 counterclaims in this case. Although the amounts to be paid have been determined
11 the parties are finalizing the terms of various settlement agreements. To reach final
12 settlement in this case the Parties determined and agreed that the following items
13 were needed: settlement agreements between the insurance carriers and parties with
14 insurance, a global settlement agreement between all parties, formation of a
15 environmental remediation trust, a motion for a good faith settlement determination,
16 and agreements between the California Regional Water Quality Control Board (“CA
17 RWQCB”) and the Environmental Remediation Trust to be formed.

18 Currently, all agreements needed for final settlement have been exchanged
19 including the settlement agreements between the insurance carriers and parties with
20 insurance, the global settlement agreement between all parties, documents forming
21 the environmental remediation trust, a motion for a good faith settlement
22 determination, and an agreement with the CA RWQCB and the proposed
23 Environmental Remediation Trust. Parties have been exchanging comments
24 regarding these agreements over the last couple weeks but some Parties have needed
25 additional time to make comments due to other case deadlines and obligations. As a
26 result, final documents that are ready for signature by all Parties have not been
27 exchanged. Despite the Parties good faith efforts and progress, the Parties require
28 additional time to finalize all the documents detailed above.

1 **b. Good Cause Exists for Current Case Deadlines To Be**
2 **Vacated**

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

12 The Final Pretrial Conference is set for April 14, 2014 while Trial is set for
13 June 10, 2014. As detailed above, Parties are making good faith efforts to finalize
14 settlement and progress has been made, Parties believe that the current remaining
15 deadlines should be vacated so the Parties can finalize all agreements and/or attend a
16 mandatory settlement conference with Magistrate Judge Barbara A. McAuliffe as
17 discussed further below. Parties fear that if these deadlines remain on calendar
18 unnecessary costs will be spent on trial preparation which could potentially derail
19 settlement altogether.

20 **c. Parties Request a Mandatory Settlement Conference With**
21 **Magistrate Judge Barbara A. McAuliffe**

22 Although parties believe final settlement terms and agreements will be
23 reached, scheduling a mandatory settlement conference with Magistrate Judge
24 Barbara A. McAuliffe appears appropriate. Accordingly, Parties request that the
25 Court schedule a mandatory settlement conference the week of April 28, 2014
26 requiring all parties, adjusters/carriers for insured parties, and other representatives
27 of a party having full and complete authority to enter into binding settlement, and the
28 principal attorneys responsible for the litigation, to be present at the mandatory

1 settlement conference, unless excused by Magistrate Judge Barbara A. McAuliffe.
2 Full authority to settle means that the individuals at the mediation be authorized to
3 fully explore settlement options and to agree at that time to any settlement terms
4 acceptable to the parties.

5 Parties believe that scheduling a mandatory settlement conference will allow
6 for additional time to finalize the settlement while still putting sufficient pressure on
7 the Parties to do so.

8 **III. CONCLUSION**

9 A global settlement in principle of this case has been reached but additional
10 time is still needed to finalize the various documents needed for settlement. As a
11 good faith attempt to settle this case has occurred, and the parties have made
12 progress, the Parties believe the current case deadlines should be vacated, and that a
13 mandatory settlement conference should be scheduled in the event settlement is not
14 finalized.

15
16 DATED: March 31, 2014

CAUFIELD & JAMES LLP

17 /s/ Jeffery Caufield

18 Jeffery L. Caufield, Esq.
19 Matthew Friedrichs, Esq.
20 Attorney for Plaintiffs/Counter-
Defendants

21
22 DATED: March 31, 2014

THE CRONIN LAW GROUP

23
24 /s/ Dennis Byrne

25 Timothy C. Cronin, Esq.
26 Dennis J. Byrne, Esq.
27 Attorneys for Defendants
28 PATRICIA CLOTHER AND
CAROLYN WHITESIDES, as
Administrators to the ESTATE OF

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MABEL LEE, THE ESTATE OF
MABEL LEE, deceased, REEDLEY
STEAM LAUNDRY and REEDLEY
DRY CLEANING WORKS

DATED: March 31, 2014

DOWNEY BRAND LLP

 /s/ Steven H. Goldberg
Steven H. Goldberg, Esq.
Attorneys for Defendants,
CONSTANCE and DANA K.
YAMAGUCHI, as administrators to
THE ESTATE OF SIETO
YAMAGUCHI, SACHIKO
YAMAGUCHI, deceased, as former
administrator to THE ESTATE OF
SIETO YAMAGUCHI, and
THE ESTATE OF SIETO
YAMAGUCHI, deceased

DATED: March 31, 2014

LAW OFFICES OF KATHLEEN CLACK

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

DATED: March 31, 2014

 /s/ Louis Martinez
LOUIS MARTINEZ

DATED: March 31, 2014

 /s/ Patsy Martinez
PATSY MARTINEZ

1 **ORDER**

2 Good cause appearing therefore, IT IS SO ORDERED that the Scheduling Order Deadlines be
3 vacated, so parties can finalize settlement.

4 IT IS FURTHER ORDERED THAT, a mandatory settlement conference be set for **Tuesday**
5 **April 29, 2014 at 10:00 AM BAM.** All parties, adjusters/carriers for insured parties, and other
6 representatives of a party having full and complete authority to enter into binding settlement, and the
7 principal attorneys responsible for the litigation, must be present, unless excused by the Court.
8 Telephonic appearances will not be permitted, absent good cause. (A representative’s distance from
9 the Court is not good cause.) Full authority to settle means that the individuals be authorized to fully
10 explore settlement options and to agree at that time to any settlement terms acceptable to the parties.

11 No later than **April 18, 2014**, each party shall submit directly to Judge McAuliffe’s chambers
12 at bamorders@caed.uscourts.gov, a confidential settlement conference statement. This statement
13 should neither be filed with the clerk of the Court nor served on any other party. Each statement shall
14 be clearly marked “CONFIDENTIAL” with the date and time of the mandatory settlement conference
15 indicated prominently.

16 This Court will vacate the settlement conference if the Court finds the settlement conference
17 will be neither productive nor meaningful to attempt to resolve all or part of this case. As far in
18 advance of the settlement conference as possible, a party shall inform the Court and other parties that
19 it believes the case is not in a settlement posture so the Court may vacate or reset the settlement
20 conference. Otherwise the parties shall proceed with the settlement conference in good faith to
21 attempt to resolve all or part of the case.

22
23 IT IS SO ORDERED.

24 Dated: April 1, 2014

/s/ Barbara A. McAuliffe
25 UNITED STATES MAGISTRATE JUDGE