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7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 SCOTT MEYERS and LILA MEYERS on their
own behalf and as INDIVIDUAL CLASS
12 REPRESENTATIVES on behalf of all others
similarly situated,

13 PLAINTIFFS,

14 vs.

15 CITY OF FRESNO, a Municipal Corporation;
16 Keith Bergthold, In His Official Capacity; Brian
Leong, In His Official Capacity; and DOES 1-
17 200 inclusive,

18 DEFENDANTS.
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CASE NO.: 1:10-CV-02359-LJO-BAM

**STIPULATION AND ORDER TO STAY
PROCEEDINGS AND LIMIT POTENTIAL
CLASS CLAIMANTS**

20 WHEREAS, Plaintiffs and Defendants are engaged in ongoing discussions regarding the case
21 and are working together in an effort to resolve the case through settlement;

22 WHEREAS, the parties recognize and acknowledge that the current relief sought in the Action
23 is equitable in nature (injunctions and declaratory relief) and are seeking to efficiently and cost
24 effectively administer these claims along with claims pending in a separate state action;

25 WHEREAS, as part of ongoing settlement efforts, Plaintiffs and Defendants desire to
26 adequately describe and limit the party participants, avoid potentially unnecessary law and motion, and
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1 coordinate discovery and negotiations with a pending state action and limit the costs and attorney's fees
2 expended on this litigation;

3 WHEREAS, Plaintiffs and Defendants are in the process of negotiating the status of the class
4 claims and considering class certification alternatives and limitations;

5 WHEREAS, Plaintiffs had initially identified two potential classes in its Second Amended
6 Complaint:

7 CLASS 1: All persons or entities in Fresno County who received a "Building Industry
8 Bulletin" regarding their claimed construction defects from the City of Fresno. and

9 CLASS 2: All persons or entities in Fresno County who own a building built within the
10 last ten years with actual or potential claims against their DEVELOPERS for building
11 code violations, including ongoing litigation, and who are subject to the policy stated in
12 City of Fresno Resolution 2010-93.

13 WHEREAS, as the remedies sought have been limited by the Court to equitable claims and as
14 the parties seek to streamline further proceedings and enhance settlement discussions, the parties desire
15 to eliminate CLASS 2.

16 WHEREAS, Plaintiffs and Defendants have further reached an agreement with respect to staying
17 these proceedings to continue to engage in settlement discussions:

18 It is stipulated by and between Plaintiffs and Defendants, by and through their respective counsel,
19 that:

- 20 1. Discovery and law and motion activities shall be stayed for **180 days** during the parties'
21 settlement discussions;
- 22 2. The currently scheduled dates shall be vacated and rescheduled to a later date, following the
23 180 day stay:
 - 24 • **October 1, 2012** deadline to file and serve moving papers on class certification;
 - 25 • **October 26, 2012** deadline to file and serve opposing papers on class certification;
 - 26 • **November 16, 2012** deadline to file and serve reply papers on class certification; and
 - 27 • **December 14, 2012** hearing on class certification.

- 1 3. Settlement discussions are currently ongoing and can be terminated at any time upon written
2 notice by either party, in which case litigation activities will resume;
- 3 4. The parties may stipulate to extend the stay upon the making of a motion or upon the consent
4 of the other party and the Court;
- 5 5. The parties shall submit joint declarations of progress to the court every 90 days;
- 6 6. The parties mutually stipulate and agree to dismiss CLASS 2 as described above and in the
7 Second Amended Complaint from this Action.

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9 **IT IS SO STIPULATED AND AGREED.**

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11 DATED: September ____, 2012

LAW OFFICES OF DANIL MONTELEONE

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13 /s/ Jeffrey T. Belton
Danil Monteleone
Jeffrey T. Belton
Kylie P. Toro
Attorneys for PLAINTIFFS
SCOTT MEYERS and LILA MEYERS, et al.

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18 DATED: _____

BETTS & RUBIN, A Professional Corporation

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20 /s/ Brady K. McGuinness
James B. Betts
Joseph D. Rubin
Brady K. McGuinness
Attorneys for DEFENDANTS
CITY OF FRESNO, KEITH BERGTHOLD, and BRIAN
LEONG

1 **ORDER**

2 Having reviewed the stipulation, and for good cause being show, **IT IS HEREBY ORDERED**

3 **AS FOLLOWS:**

- 4
- 5 1. The class certification deadlines are hereby vacated;
- 6
- 7 2. CLASS 2 is hereby dismissed without prejudice.
- 8 3. The Court **SETS** a Scheduling Conference for **Thursday, February 7, 2013 at 8:30 AM** in
- 9 Courtroom 8 before Judge Barbara A. McAuliffe. A JOINT Scheduling Conference Report,
- 10 carefully prepared and executed by all counsel, shall be electronically filed in full compliance
- 11 with the requirements set forth in the Order Setting Mandatory Scheduling Conference, one
- 12 (1) full week prior to the Scheduling Conference, and a copy shall be e-mailed, in
- 13 WordPerfect or Word format, to bamorders@caed.uscourts.gov.
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- 15 4. The parties shall file their first joint status report on **December 20, 2012**, indicating the status
- 16 of the proceedings

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IT IS SO ORDERED.

Dated: **September 21, 2012**

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