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 6 LAKE TAHOE UNIFIED SCHOOL DISTRICT

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 8 UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA

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 11 UNITED STATES OF AMERICA,
 12 Plaintiff,
 13 v.
 14 EL DORADO COUNTY,
 CALIFORNIA, ET AL.,
 15 Defendants.

CASE NO.: 2:01-cv-01520-MCE-GCH

**STIPULATION RE CONTINUANCE OF
 COURT’S PRETRIAL SCHEDULING
 ORDER AND ORDER THEREON**

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 17 AND RELATED ACTIONS.

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 19 The parties, except for Third-Party Defendant Barton Healthcare System, have met with
 20 the Court appointed Special Master, Catherine Yanni, on several occasions, exchanged detailed
 21 briefs and other correspondence including cost allocation models and proposals. After several
 22 meetings, certain Third-Party Defendants¹ and Third-Party Plaintiff El Dorado County
 23 determined it was appropriate to retain an additional mediator to focus directly on the disputes
 24 between them.

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 26 ¹ Douglas County, Nevada, Lake Tahoe Unified School District, The Hertz Corporation, Raley’s,
 Harrah’s Operating Company, Inc., Harveys Tahoe Management Company, Inc., Heavenly
 27 Valley Ski & Resort and Heavenly Valley, Sierra Pacific Power Company, and Safeway Inc.
 (collectively “Settling Third-Party Defendants”).

1 Accordingly, the Settling Third Party-Defendants and El Dorado County retained Randall Wulff
2 as mediator, and a mediation session was held with Mr. Wulff. As a result of this session, the
3 Settling Third Party-Defendants reached an agreement as to the terms of a settlement with the
4 United States, El Dorado County, the City of South Lake Tahoe and South Tahoe Refuse
5 (collectively “Settling Parties”), which terms are embodied in a proposed Consent Decree
6 currently under review by the United States Environmental Protection Agency (“EPA”). Upon
7 Court approval, the Consent Decree will dispose of any and all pending claims, cross-claims and
8 counter-claims between the Settling Third-Party Defendants, on the one hand, and the United
9 States, El Dorado County, the City of South Lake Tahoe and South Tahoe Refuse on the other.

10 In the meantime, the City of South Lake Tahoe, El Dorado County, South Tahoe Refuse,
11 South Tahoe Public Utility District and the United States are continuing their mediation efforts
12 with the assistance of the Special Master, Ms. Yanni.

13 The Settling Parties have completed negotiating and drafting the proposed Consent
14 Decree. The Settling Third-Party Defendants, El Dorado County, the City of South Lake Tahoe
15 and South Tahoe Refuse have reviewed, approved, and executed the proposed Consent Decree.
16 Review and preliminary approval of the Consent Decree has been obtained by the United States,
17 which will execute the proposed Consent Decree once EPA concurrence is received. The Settling
18 Parties anticipate lodging the proposed Consent Decree with the Court in the near future. In order
19 to allow the Settling Parties time to obtain EPA concurrence to the proposed Consent Decree, and
20 for the Court to consider a motion to enter and approve the Consent Decree following the
21 required public comment period, the parties submit that a 90-day continuance of all pretrial dates
22 and deadlines, including the trial date, contained in the Stipulation re Continuance of Court’s
23 Pretrial Scheduling Order and Order (“August Scheduling Order”), filed August 25, 2008, is
24 warranted. Therefore, *with the concurrence of the Court Appointed Special Master,*

25 IT IS HEREBY STIPULATED that the current trial and pretrial dates as established by
26 the August Scheduling Order, should be amended as follows:

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I. DISCOVERY

All discovery, with the exception of expert discovery, shall be completed by **December 1, 2008**. In the event the Consent Decree is not approved by the Court, the discovery deadline is extended to **October 23, 2009**, only with respect to discovery properly served and pending prior to the above December 1, 2008 deadline. In this context, “completed” means that all discovery shall have been conducted so that all depositions have been taken and any disputes relative to discovery shall have been resolved by appropriate order if necessary and, where discovery has been ordered, the order has been obeyed. All motions to compel discovery must be noticed on the magistrate judge’s calendar in accordance with the local rules of this Court.

II. DISCLOSURE OF EXPERT WITNESSES

All counsel are to simultaneously designate in writing, filed with the Court, and serve upon all other parties the name, address, and area of expertise of each expert that they propose to tender at trial not later than **December 23, 2009**.² The designation shall be accompanied by a written report prepared and signed by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B).

Within twenty (20) days after the designation of expert witnesses, any party may designate a supplemental list of expert witnesses who will express an opinion on a subject covered by an expert designated by an adverse party. The right to designate a supplemental expert for rebuttal purposes only shall apply to a party who has not previously disclosed an expert witness on the date set for expert witness disclosure by this Scheduling Order.

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² The discovery of experts will include whether any motions based on *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and/or *Kumo Tire Co. v. Carmichael*, 119 S.Ct. 1167 (1999) are anticipated.

1 Failure of a party to comply with the disclosure schedule as set forth above in all
2 likelihood will preclude that party from calling the expert witness at the time of trial. An expert
3 witness not appearing on the designation will not be permitted to testify unless the party offering
4 the witness demonstrates: (a) that the necessity for the witness could not have been reasonably
5 anticipated at the time the list was proffered; (b) that the court and opposing counsel were
6 promptly notified upon discovery of the witness; and (c) that the witness was promptly made
7 available for deposition.

8 For purposes of this scheduling order, an “expert” is any person who may be used at trial
9 to present evidence under Rules 702, 703, and 705 of the Federal Rules of Evidence, which
10 include both “percipient experts” (persons who, because of their expertise, have rendered expert
11 opinions in the normal course of their work duties or observations pertinent to the issues in the
12 case) and “retained experts” (persons specifically designated by a party to be a testifying expert
13 for the purposes of litigation).

14 Each party shall identify whether a disclosed expert is percipient, retained, or both. It will
15 be assumed that a party designating a retained expert has acquired the express permission of the
16 witness to be so listed. Parties designating percipient experts must state in the designation who is
17 responsible for arranging the deposition of such persons.

18 All experts designated are to be fully prepared at the time of designation to render an
19 informed opinion, and give their bases for their opinion, so that they will be able to give full and
20 complete testimony at any deposition taken by the opposing party. Experts will not be permitted
21 to testify at the trial as to any information gathered or evaluated, or opinion formed, after
22 deposition taken subsequent to designation.

23 Counsel are instructed to complete all discovery of expert witnesses in a timely manner in
24 order to comply with the Court’s deadline for filing dispositive motions.

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1 **III. MOTION HEARING SCHEDULE**

2 All dispositive motions, except motions for continuances, temporary restraining orders or
3 other emergency applications, shall be **heard no later than February 23, 2010**. The parties are
4 responsible for ensuring that all motions are filed to allow for proper notice of the hearing under
5 the Federal Rules of Civil Procedure and/or Local Rules. Available hearing dates may be
6 obtained by calling Stephanie Deutsch, Deputy Courtroom Clerk, (916) 930-4207.

7 All purely legal issues are to be resolved by timely pretrial motions. Local Rule 78-230
8 governs the calendaring and procedures of civil motions with the following additions:

9 (a) The opposition and reply must be filed **by 4:00 p.m.** on the day due; and

10 (b) When the last day for filing an opposition brief falls on a legal holiday, the
11 opposition brief shall be filed on the last court day immediately preceding the legal holiday.

12 Failure to comply with Local Rule 78-230(c), as modified by this Order, may be deemed
13 consent to the motion and the Court may dispose of the motion summarily. Further, failure to
14 timely oppose a summary judgment motion³ may result in the granting of that motion if the
15 movant shifts the burden to the nonmovant to demonstrate that a genuine issue of material fact
16 remains for trial.

17 The Court places a page limit of twenty (20) pages on all initial moving papers, twenty
18 (20) pages on oppositions, and ten (10) pages for replies. All requests for page limit increases
19 must be made in writing to the Court setting forth any and all reasons for any increase in page
20 limit at least fourteen (14) days prior to the filing of the motion.

21 For the Court’s convenience, citations to Supreme Court cases should include parallel
22 citations to the Supreme Court Reporter.

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27 ³ The Court urges any party that contemplates bringing a motion for summary judgment or who
28 must oppose a motion for summary judgment to review Local Rule 56-260.

1 The parties are reminded that a motion in limine is a pretrial procedural device designed to
2 address the admissibility of evidence. The Court will look with disfavor upon dispositional
3 motions (except those noted on page 4) presented at the Final Pretrial Conference or at trial in the
4 guise of motions in limine.

5 The parties are cautioned that failure to raise a dispositive legal issue that could have been
6 tendered to the Court by proper pretrial motion prior to the dispositive motion cut-off date may
7 constitute waiver of such issue.

8 **IV. FINAL PRETRIAL CONFERENCE**

9 The Final Pretrial Conference is set for **July 16, 2010 at 9:00 a.m.** At least one of the
10 attorneys who will conduct the trial for each of the parties shall attend the Final Pretrial
11 Conference. If by reason of illness or other unavoidable circumstance a trial attorney is unable to
12 attend, the attorney who attends in place of the trial attorney shall have equal familiarity with the
13 case and equal authorization to make commitments on behalf of the client.

14 Counsel for all parties are to be fully prepared for trial at the time of the Final Pretrial
15 Conference, with no matters remaining to be accomplished except production of witnesses for
16 oral testimony.

17 The parties shall file, not later than **June 25, 2010** a Joint Final Pretrial Conference
18 Statement. The provisions of Local Rules 16-281 shall apply with respect to the matters to be
19 included in the Joint Final Pretrial Conference Statement. In addition to those subjects listed in
20 Local Rule 16-281(b), the parties are to provide the Court with a plain, concise statement that
21 identifies every non-discovery motion tendered to the Court and its resolution.

22 Failure to comply with Local Rule 16-281, as modified by this order, may be grounds for
23 sanctions.

24 At the time of filing the Joint Final Pretrial Conference Statement, counsel shall also
25 electronically mail to the Court in digital format compatible with Microsoft Word or
26 WordPerfect, the Joint Final Pretrial Conference Statement in its entirety including the witness
27 and exhibit lists. These documents shall be sent to: **mceorders@caed.uscourts.gov.**

1 The parties should identify first the core undisputed facts relevant to all claims. The
2 parties should then, in a concise manner, identify those undisputed core facts that are relevant to
3 each claim. The disputed facts should be identified in the same manner. Where the parties are
4 unable to agree as to what disputed facts are properly before the Court for trial, they should
5 nevertheless list all disputed facts asserted by each party. Each disputed fact or undisputed fact
6 should be separately numbered or lettered.

7 Each party shall identify and concisely list each disputed evidentiary issue which will be
8 the subject of a motion in limine.

9 Each party shall identify the points of law which concisely describe the legal issues of the
10 trial which will be discussed in the parties' respective trial briefs. Points of law should reflect
11 issues derived from the core undisputed and disputed facts. Parties shall not include argument or
12 authorities with any point of law.

13 The parties are reminded that pursuant to Local Rule 16-281 they are required to list in the
14 Joint Final Pretrial Conference Statement all witnesses and exhibits they propose to offer at trial.
15 After the name of each witness, each party shall provide a brief statement of the nature of the
16 testimony to be proffered. The parties may file a joint list or each party may file separate lists.
17 These list(s) shall not be contained in the body of the Joint Final Pretrial Conference Statement
18 itself but shall be attached as separate documents to be used as addenda to the Final Pretrial
19 Order.

20 Plaintiff's exhibits shall be listed numerically. Defendants' exhibits shall be listed
21 alphabetically. The parties shall use the standard exhibit stickers provided by the Court: pink for
22 plaintiff and blue for defendant. In the event that the alphabet is exhausted, the exhibits shall be
23 marked "AA-ZZ" and "AAA-ZZZ" etc. All multi page exhibits shall be stapled or otherwise
24 fastened together and each page within the exhibit shall be numbered. The list of exhibits shall
25 not include excerpts of depositions, which may be used to impeach witnesses. In the event that
26 Plaintiff and Defendant offer the same exhibit during trial, that exhibit shall be referred to by the
27 designation the exhibit is first identified.

1 The Court cautions the parties to pay attention to this detail so that all concerned will not be
2 confused by one exhibit being identified with both a number and a letter.

3 The Final Pretrial Order will contain a stringent standard for the offering at trial of
4 witnesses and exhibits not listed in the Final Pretrial Order, and the parties are cautioned that the
5 standard will be strictly applied. On the other hand, the listing of exhibits or witnesses that a party
6 does not intend to offer will be viewed as an abuse of the Court's processes.

7 Counsel shall produce all trial exhibits to Stephanie Deutsch, the Courtroom Clerk, no
8 later than **3:00 p.m. on August 23, 2010.**

9 The parties also are reminded that pursuant to Rule 16 of the Federal Rules of Civil
10 Procedure it will be their duty at the Final Pretrial Conference to aid the Court in: (a) the
11 formulation and simplification of issues and the elimination of frivolous claims or defenses; (b)
12 the settling of facts that should properly be admitted; and (c) the avoidance of unnecessary proof
13 and cumulative evidence. Counsel must cooperatively prepare the Joint Final Pretrial Conference
14 Statement and participate in good faith at the Final Pretrial Conference with these aims in mind.
15 A failure to do so may result in the imposition of sanctions which may include monetary
16 sanctions, orders precluding proof, elimination of claims or defenses, or such other sanctions as
17 the Court deems appropriate.

18 **IV. TRIAL SETTING**

19 The trial is set for **August 30, 2010 at 9:00 a.m.** Trial will be by court. The parties
20 estimate a trial length of **twenty-five (25) days.**

21 **V. SETTLEMENT CONFERENCE**

22 No settlement conference is currently scheduled. A settlement conference may be set at
23 the parties' request. In the event a settlement conference date is requested, the parties shall file
24 said request jointly, in writing.

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1 Counsel, except for Counsel for the United States, are instructed to have a principal with
2 full settlement authority present at the Settlement Conference or to be fully authorized to settle
3 the matter on any terms. At least seven (7) calendar days before the Settlement Conference
4 counsel for each party shall submit to the chambers of the settlement judge a confidential
5 Settlement Conference Statement. Such statements are neither to be filed with the Clerk nor
6 served on opposing counsel. Each party, however, shall serve notice on all other parties that the
7 statement has been submitted. If the settlement judge is not the trial judge, the Settlement
8 Conference Statement shall not be disclosed to the trial judge.

9 After the Final Pretrial Conference, the Court will not set a settlement conference. The
10 parties are free, however, to continue to mediate or attempt to settle the case with the
11 understanding that the trial date is a firm date.

12 **VI. VOLUNTARY DISPUTE RESOLUTION PROGRAM**

13 Pursuant to Local Rule 16-271 parties will need to lodge a stipulation and proposed order
14 requesting referral to the Voluntary Dispute Resolution Program.

15 **VII. MODIFICATION OF PRETRIAL SCHEDULING ORDER**

16 The parties are reminded that pursuant to Rule 16(b) of the Federal Rules of Civil
17 Procedure, the Status (Pretrial Scheduling) Order shall not be modified except by leave of court
18 upon a showing of good cause. Agreement by the parties pursuant to stipulation alone does not
19 constitute good cause. Except in extraordinary circumstances, unavailability of witnesses or
20 counsel does not constitute good cause.

21 Date: December 24, 2008

/s/ Karl J. Fingerhood (as authorized 12/24/08)

KARL J. FINGERHOOD

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1 Date: December 29, 2008

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10 Date: December 23, 2008

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16 Date: December 23, 2008

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22 Date: December 23, 2008

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1 Date: December 23, 2008

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6 Date: December ____, 2008

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12 **SPECIAL MASTER RECOMMENDATION**

13 **APPROVED AS TO FORM AND CONCUR WITH AND RECOMMEND A**
14 **90-DAY CONTINUANCE OF ALL PRE-TRIAL AND TRIAL DATES AS PROVIDED**
15 **FOR HEREIN.**

16 Dated: December 31, 2008

/s/ Catherine Yanni (as authorized 12/31/08)
Catherine Yanni
Court Appointed Special Master

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19 **ORDER**

20 **Based upon a review of the record and good cause appearing,**
21 **IT IS SO ORDERED that the current trial and pretrial dates as established by the**
22 **August Scheduling Order shall be amended as set forth herein.**

23 **DATED: January 9, 2009**

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25 
26 **MORRISON C. ENGLAND, JR.**
27 **UNITED STATES DISTRICT JUDGE**