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Cross-Claimant Ben J. Newitt

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES H. LEWIS and JANE W. LEWIS,

Plaintiffs,

v.

ROBERT D. RUSSELL; BEN J. NEWITT; the  
Estate of PHILLIP NEWITT, Deceased, et al.,

Defendants.

Case No. CIV S-03-2646 WBS KJM

**STIPULATION FOR ORDER OF  
DISMISSAL**

**[F.R.C.P. Rule 41(a)]**

AND RELATED COUNTER- AND CROSS-  
ACTIONS.

{JEM/00016941.2}

Defendant/Counter-Claimant/Cross-Claimant BEN J. NEWITT (“Newitt”) and Defendant and Cross-Defendant MARTIN FRANCHISES, INC. (“Martin”), through their respective attorneys of record, stipulate to an order of the above-entitled Court dismissing Newitt’s claims in his Answer to First Amended Third Party Complaint of Davis Center, LLC, et al; Cross-Claims; and Demand for Jury Trial filed on or about February 19, 2008, in the above-entitled action (“Newitt’s Claims”), as against Martin only, with prejudice, according to the terms of Settlement Agreement and Mutual Release of Claims (the “Release”), having an effective date of November 4, 2011, entered into by and between Newitt and Martin.

Dated: December 15, 2011

COTA COLE LLP

By: /s/

Dennis M. Cota  
Derek P. Cole  
Attorneys for Defendant/Counter-  
Claimant/Cross-Claimant Ben J. Newitt

Dated: December 15, 2011

GORDON & REES LLP

By: /s/

P. Gerhardt Zacher  
Kristin N. Reyna  
Attorneys for Third-Party Defendant/  
Cross-Claimant Martin Franchises, Inc.  
aka/dba Martinizing Dry Cleaning

### ORDER OF DISMISSAL

The Court, having reviewed and considered the stipulation set forth above, and good cause appearing therefor:

**IT IS HEREBY ORDERED** that Newitt’s Claims in the above-entitled action be, and hereby are, dismissed, as against defendant Martin Franchises, Inc. only, with prejudice.

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1           **IT IS ALSO HEREBY ORDERED** that the dismissal is expressly conditioned upon the  
2 terms and conditions of that certain Settlement Agreement and Mutual Release of Claims entered  
3 into by and between Newitt and Martin having an Effective Date of November 4, 2011 (the  
4 “Release”).

5           **IT IS FURTHER HEREBY ORDERED** that the Court retains jurisdiction of this matter  
6 for the sole purpose of taking any action needed to enforce the terms of the Release.

7           **IT IS FURTHER HEREBY ORDERED** that each of the parties hereto shall bear his/its  
8 own costs, including attorney’s fees, as provided in the Release.

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11 Dated: December 15, 2011



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13 WILLIAM B. SHUBB  
14 UNITED STATES DISTRICT JUDGE  
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**PROOF OF SERVICE**

I, Rena Wade, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action. My business address is Cota Cole LLP, 2261 Lava Ridge Court, Roseville, California 95661. On December 15, 2011 I served the within document(s):

**STIPULATION FOR ORDER OF DISMISSAL**

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 3:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Roseville, California, addressed as set forth below.
- ☐ I caused such envelope to be delivered via overnight delivery addressed as indicated below. Such envelope was deposited for delivery by \_\_\_\_\_, following the firm's ordinary business practices.
- ☒ via electronic/email service. The document(s) listed above were served via email the addressees listed in the attached service list via the Eastern District's CM/ECF server.

**SEE ATTACHED SERVICE LIST**

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 15, 2011, at Roseville, California.

\_\_\_\_\_  
Rena Wade

*Lewis v. Russell, et al.*, U.S. Eastern District Court Case No. CIV S-03-2646 WBS KJM

**SERVICE LIST**

<b>Attorney/Firm</b>	<b>Party(ies) Represented</b>
S. Craig Hunter P.O. Box 13810 San Luis Obispo, CA 93406 Tel: (805) 544-4980 Fax: (805) 547-9302	Attorneys for Plaintiffs Charles H. Lewis and Jane W. Lewis
Michael S. Middleton Middleton, Young & Minney, LLP 701 University Avenue, Suite 150 Sacramento, CA 95825 Tel: (916) 646-1400 Fax: (916) 646-1300	Attorneys for Defendants The Davis Center, LLC; Emily Stover, individually and as Trustee of the Stover Family Trust and as Personal Representative for Melvin Stover (deceased); and Richard Albert Stinchfield, individually and as Trustee of the Robert S. Stinchfield Separate Real Property Trust and as Trustee of the Barbara Ellen Stinchfield Testamentary Trust (dissolved)
Jeffory J. Scharff Attorney at Law 2625 Fair Oaks Boulevard, Suite 7 Sacramento, CA 95864 Tel: (916) 485-5700 Fax: (916) 485-5912	Attorneys for Defendants Potter Taylor & Company, and its predecessors-in-interest: Potter, Long, Adams & Taylor, Ltd.; Davis Center; Potter- Taylor, Inc.; and Potter Taylor & Scurfield, Inc.
Jung Hang Suh and Soo Jung Suh 1843 Trinity Way West Sacramento, CA 95691 [Service by U.S. Mail Only]	Unrepresented Defendants
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Daniel W. Smith Law Offices of Daniel W. Smith 3610 American River Drive, Suite 112 Sacramento, CA 95864 Tel: (916) 922-9400 Fax: (916) 922-0481	Attorneys for Defendant Irene Russell, Successor- in-Interest to Robert D. Russell (deceased)
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{JEM/00016941.2}

POS, -2-

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