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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CHARLES H. LEWIS and JANE W. NO. CIV. 2:03-2646 WBS CKD
LEWIS,

Plaintiffs, ORDER

v.

ROBERT D. RUSSELL; IRENE
RUSSELL; BEN J. NEWITT; the
Estate of PHILLIP NEWITT,
Deceased; JUNG HANG SUH; SOO
JUNG SUH; JUNG K. SEO; THE DAVIS
CENTER, LLC; MELVIN R. STOVER,
individually and as trustee of
the Stover Family Trust; EMILY
A. STOVER, individually and as
trustee of the Stover Family
Trust; STOVER FAMILY TRUST;
RICHARD ALBERT STINCHFIELD,
individually and as successor
trustee of the Robert S.
Stinchfield Separate Property
Revocable Trust, and as trustee
of the Barbara Ellen Stinchfield
Testamentary Trust; ROBERT S.
STINCHFIELD SEPARATE PROPERTY
REVOCABLE TRUST; THE BARBARA
ELLEN STINCHFIELD TESTAMENTARY
TRUST; WORKROOM SUPPLY, INC., a
California corporation; SAFETY-
KLEEN CORPORATION, a California
corporation; the CITY OF DAVIS;
JENSEN MANUFACTURING COMPANY;

1 VIC MANUFACTURING COMPANY;
2 MARTIN FRANCHISES INC., aka/dba
3 MARTINIZING DRY CLEANING,

4 Defendants.

5 AND RELATED COUNTER, CROSS,
6 AND THIRD PARTY CLAIMS.

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8 When a motion for summary judgment is filed, Federal
9 Rule of Civil Procedure 56(d) provides that "[i]f a nonmovant
10 shows by affidavit or declaration that, for specified reasons, it
11 cannot present facts essential to justify its opposition, the
12 court may" give the nonmovant "time to obtain affidavits or
13 declarations or to take discovery" Fed. R. Civ. Pro.
14 56(d). At the hearing on Martin Franchises, Inc.'s ("Martin"),
15 motion for summary judgment on September 24, 2012, counsel for
16 the City of Davis ("City") stated that she was not prepared to
17 present such facts in support of the City's CERCLA and nuisance
18 claims asserted against Martin.


19 The court will accordingly give the City ten days from
20 the date of this Order to file a request pursuant to Rule 56(d).
21 Any request shall be supported by an affidavit showing why the
22 City needs additional time to gather facts essential to oppose
23 Martin's motion for summary judgment, how much additional time it
24 needs, and what discovery it plans to do in that time.

25 Until the court considers any Rule 56(d) request by the
26 City, it will not rule on Martin's motion for summary judgment on
27 the City's claims against Martin for recovery under CERCLA §
28 107(a), contribution under CERCLA § 113(f), public nuisance under

1 California Civil Code section 713, public nuisance under Davis
2 Municipal Code Chapter 23.0.0, contribution, equitable indemnity,
3 declaratory relief under CERCLA § 113(g), and declaratory relief
4 under 28 U.S.C. § 2201.

5 IT IS SO ORDERED.

6 DATED: October 2, 2012

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9 WILLIAM B. SHUBB
10 UNITED STATES DISTRICT JUDGE
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