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 10 Cross-Claimant CITY OF DAVIS

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 Government Code Section 6103

11 UNITED STATES DISTRICT COURT
 12 EASTERN DISTRICT OF CALIFORNIA

13 CHARLES H. LEWIS, et al.,

14 Plaintiffs,

15 v.

16 ROBERT D. RUSSELL, et al.,

17 Defendants,

Case No: 2:03-CV-02646 WBS AC

**STIPULATION FOR DISMISSAL;
 [PROPOSED] ORDER**

18 AND RELATED COUNTER AND
 19 CROSSCLAIMS.

Courtroom: 5
 Judge: Honorable William B. Shubb
 Pre-Trial Conference: July 21, 2014

20 {JHK/00023152. }

1 IT IS HEREBY STIPULATED, by and between Cross-Claimant the City of Davis
2 (“City”) and Cross-Defendant Martin Franchises, Inc. (“Martin”), through their designated
3 counsel, that the following cross-claims, which include all of the remaining cross-claims asserted
4 by the City in its First Amended Crossclaims in the above-captioned action, shall be dismissed
5 with prejudice as against Martin only (and not against any other party, person or entity in the
6 action) pursuant to Federal Rule of Civil Procedure 41, and according to the terms and conditions
7 in the Settlement Agreement and Mutual Release of Claims between the City and Martin, having
8 an Effective Date of November 19, 2012 (“Settlement Agreement”): (1) cost recovery under the
9 Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”)
10 section 107(a); (2) contribution under CERCLA section 113(f); (3) public nuisance under
11 California Code of Civil Procedure (“CCP”) section 731; (4) public nuisance under Davis
12 Municipal Code section 23.0.0 *et seq.*; (5) Declaratory relief under CERCLA section 113(g);
13 (6) contribution and equitable indemnity; and (7) declaratory relief under 28 U.S.C. section 2201.

14 Pursuant to the Settlement Agreement, the City and Martin agree to bear their own costs
15 and attorneys’ fees with respect to the dismissed cross-claims and request the Court to maintain
16 jurisdiction to enforce the terms of the Settlement Agreement.

17 Dated: January 11, 2013

GORDON & REES LLP

18
19 By: /s/Kristin N. Reyna (as authorized on 1/8/13)

KRISTIN N. REYNA
Attorneys for Cross-Defendant
MARTIN FRANCHISES, INC.

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21
22 Dated: January 11, 2013

COTA COLE LLP

23
24 By: /s/Jennifer Hartman King

JENNIFER HARTMAN KING
MIRANDA CARROLL DALJU
Attorneys for Defendant, Cross-Defendant, and
Cross-Claimant
CITY OF DAVIS

COTA COLE LLP
2261 LAVA RIDGE COURT
ROSEVILLE, CALIFORNIA 95661

ORDER

The Court, having reviewed and considered the Stipulation of Cross-Claimant the City of Davis (“City”) and Cross-Defendant Martin Franchises, Inc. (“Martin”) set forth above, and good cause appearing therefor:

IT IS HEREBY ORDERED that each of the remaining cross-claims asserted by the City in its First Amended Crossclaims in *Lewis et al. v. Russell et al.*, United States District Court, Eastern District of California, Case No. 2:03-CV-02646 WBS AC, is dismissed with prejudice as against Martin only (and not against any other party, person or entity in the action), pursuant to Federal Rule of Civil Procedure 41, and according to the terms and conditions in the Settlement Agreement and Mutual Release of Claims between the City and Martin, having an Effective Date of November 19, 2012 (“Settlement Agreement”): (1) cost recovery under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”) section 107(a); (2) contribution under CERCLA section 113(f); (3) public nuisance under California Code of Civil Procedure (“CCP”) section 731; (4) public nuisance under Davis Municipal Code section 23.0.0 *et seq.*; (5) declaratory relief under CERCLA section 113(g); (6) contribution and equitable indemnity; and (7) declaratory relief under 28 U.S.C. section 2201.

IT IS FURTHER HEREBY ORDERED that the Court maintains jurisdiction to enforce the terms of the Settlement Agreement.

IT IS FURTHER HEREBY ORDERED that the City and Martin shall bear their own costs and attorneys’ fees with respect to the dismissed cross-claims, as provided in the Settlement Agreement.

IT IS SO ORDERED.

Dated: January 11, 2013



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, Christie Ensley, declare that 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, CA 95661. On January 11, 2013, I served the within document(s):

• **STIPULATION FOR DISMISSAL; [PROPOSED] ORDER**

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:

Jung K. Seo *In Pro Per Defendant*
3539 Bradshaw Road, Suite B-265
Sacramento, CA 95827

Jung Hang Suh and Soo Jung Suh *In Pro Per Defendant*
1843 Trinity Way
West Sacramento, CA 95691

by Federal Court email: by the electronic service procedures of the United States District Court, Eastern District of California, on all parties not served by mail.

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 January 11, 2013, at Roseville, California.

/s/Christie Ensley
Christie Ensley

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ROSEVILLE, CALIFORNIA 95661