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12 CITY OF DAVIS

13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

16 CHARLES H. LEWIS AND JANE W.
17 LEWIS,

18 Plaintiffs,

19 v.

20 ROBERT D. RUSSELL, ET AL.,

21 Defendants,

Case No.: CIV S-03-2646 WBS AC

**STIPULATION TO EXTEND TRIAL AND
OTHER DEADLINES SET FORTH IN
PRETRIAL SCHEDULING ORDER**

[PROPOSED] ORDER

[LR 144]

Trial Date: May 1, 2018

22
23 AND RELATED COUNTER, CROSS AND
24 THIRD-PARTY CLAIMS.

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28 00021405.1

STIPULATION TO EXTEND TRIAL AND OTHER DEADLINES SET FORTH IN PRETRIAL SCHEDULING ORDER;
[PROPOSED] ORDER

1 **STIPULATION**

2 Counter Claimant City of Davis (the “City”); Counter Claimants The Davis Center, LLC,
3 Emily A. Stover, individually and as Trustee of the Stover Family Trust and as Personal
4 Representative for Melvin Stover (Deceased), and Richard Albert Stinchfield, individually and as
5 Trustee of the Robert S. Stinchfield Separate Real Property Trust and as Trustee of the Barbara
6 Ellen Stinchfield Testamentary Trust (collectively, “Landowners”); Counter Claimants Potter
7 Taylor & Co., Potter, Long, Adams & Taylor Ltd., Davis Center, Potter-Taylor, Inc., Potter Taylor
8 & Scurfield, Inc. (collectively, “Potter-Taylor”); and Counter Defendants Charles H. Lewis
9 (Deceased) and Jane W. Lewis (Deceased), Estate of Charles H. Lewis (Deceased) and Robert
10 Zehnder as Personal Representative of Charles H. Lewis (Deceased) (“Lewis”) (The City,
11 Landowners, Potter-Taylor and Lewis are referred to collectively herein as the “Participating
12 Parties”), by and through their respective counsel, hereby stipulate as follows:

13 WHEREAS, on August 12, 2013, The Davis Center moved to amend the scheduling order
14 (Doc. No. 447) and the Participating Parties stipulated to extend the deadlines to disclose experts
15 (Doc. No. 458). On August 30, 2013, the Court entered Orders granting the Motion (Doc. No. 457)
16 and approving the Stipulation (Doc. No. 460).

17 WHEREAS, on February 28, 2014, the Participating Parties entered into a further stipulation
18 to amend the scheduling order to allow time to produce and compile data associated with the
19 investigative study (Doc. No. 472). On March 3, 2014, the Court entered an Order approving the
20 Stipulation (Doc. No. 474).

21 WHEREAS, on August 15, 2014, the Participating Parties entered into a further stipulation to
22 amend the scheduling order to allow time to produce and compile additional data associated with the
23 site investigation (Doc. No. 475). On August 19, 2014, the Court entered an Order approving the
24 Stipulation (Doc. No. 477).

25 WHEREAS, on December 12, 2014, the Participating Parties entered into a further stipulation
26 to amend the scheduling order to allow time to develop a cost estimate and work plan for the proposed
27 remediation (Doc. No. 478). On the same day, the Court entered an Order approving the Stipulation
28 (Doc. No. 479).

1 WHEREAS, on June 2, 2015, the Participating Parties entered into a further stipulation to
2 amend the scheduling order to allow additional time to develop a cost estimate and work plan for the
3 proposed remediation and to enter into possible mediation in an effort to resolve the case (Doc. No.
4 480). On June 15, 2015, the Court entered an Order approving the Stipulation (Doc. No. 481).

5 WHEREAS, the Participating Parties held a mediation in December of 2015, and since
6 that time have continued to negotiate settlement terms among themselves and with the California
7 Regional Water Quality Control Board, Central Valley Region.

8 WHEREAS, on December 21, 2016, in light of progress in settlement negotiations, the
9 Participating Parties entered into a further stipulation to amend the scheduling order to allow
10 additional time to draft settlement documents and secure approval of those terms by all
11 Participating Parties (Doc. No. 511). On December 22, 2016, the Court entered an Order
12 approving the Stipulation (Doc. No. 512). Under that Order, the trial in this matter was set to
13 commence on October 31, 2017.

14 WHEREAS, on March 7, 2017, counsel for Lewis filed a Statement of Fact of Death in
15 the above-captioned action (“Action”), suggesting upon the record the death of Charles H. Lewis
16 and Jane W. Lewis (Doc. No. 518).

17 WHEREAS, on May 22, 2017, the Superior Court of California for Yolo County duly
18 appointed Robert Zehnder as Personal Representative of Charles H. Lewis in Case Number
19 PB17-94.

20 WHEREAS, on June 15, 2017, the Participating Parties transmitted various settlement
21 documents to the California Regional Water Quality Control Board, Central Valley Region, for its
22 review and approval.

23 WHEREAS, on June 22, 2017, the Participating Parties entered into a stipulation agreeing
24 to substitute: 1) Robert Zehnder, as Personal Representative of Charles H. Lewis as a party to this
25 Action in place of Charles H. Lewis (Deceased) and Jane W. Lewis (Deceased) for purposes of
26 the City’s counter claims against Lewis only; and 2) the Estate of Charles H. Lewis (Deceased) as
27 a party to this Action in place of Charles H. Lewis (Deceased) and Jane W. Lewis (Deceased) for
28 purposes of the Landowner’s and Potter-Taylor’s respective counter claims against Lewis only

1 (Doc. No. 526).

2 WHEREAS, on June 22, 2017, in light of the Participating Parties' progress in having
3 prepared the various settlement documents and efforts in the process to secure approval of the
4 settlement documents from the California Regional Water Quality Control Board, Central Valley
5 Region ("Regional Board"), the Participating Parties entered into a further stipulation to amend
6 the scheduling order and extend the deadlines by three months (Doc. No. 527). On June 23,
7 2017, the Court entered an Order approving that stipulation (Doc. No. 529). Under that Order,
8 the trial in this matter was set to commence on January 30, 2018.

9 WHEREAS, on September 22, 2017, in light of progress in settlement negotiations, the
10 Participating Parties entered into a further stipulation to amend the scheduling order to allow
11 additional time to redraft settlement documents and secure approval of those terms by all
12 Participating Parties (Doc. No. 531). On the same date, the Court entered an Order approving the
13 Stipulation (Doc. No. 532). Under that Order, the trial in this matter is set to commence on May
14 1, 2018.

15 WHEREAS, on December 13, 2017, counsel for City filed a Motion for Summary
16 Judgment or, In the Alternative, Summary Adjudication as to Cross-Claimants Jung Hang Suh
17 and Soo Jung Suh (Doc. No. 533) which is scheduled to be heard on February 5, 2018.

18 WHEREAS, on December 14, 2017, the Court issued its own Minute Order continuing
19 the Pretrial Conference from February 26, 2018 to March 12, 2018 (Doc. No. 534).

20 WHEREAS, since the Court's September 22, 2017 Order resetting the trial date to May 1,
21 2018, the Participating Parties have continued to coordinate to finalize the various settlement
22 documents, the process for which included a public notice and comment period. In addition, the
23 Regional Board required an additional amount of time to perform its final review of the
24 settlement documents.

25 WHEREAS, the Participating Parties, however, have not yet reached agreement on the
26 final terms of the Agreement and Covenant Not to Sue ("CNS") between the Regional Board, and
27 the Participating Parties, but are continuing their negotiations. On January 5, 2018, the Regional
28 Board submitted material revisions and changes to the CNS. On January 18, 2018, counsel for

1 Landowners advised all parties to the CNS that their clients rejected the Regional Board's
2 material revisions to the CNS and offered alternative language. The Participating Parties and the
3 Regional Board continue to negotiate the terms, but have yet to finalize the terms and require
4 additional time in light of the above-described circumstances and the difficulty of obtaining
5 timely approval of material language to the CNS.

6 WHEREAS, due to the upcoming May 1, 2018, trial date, proceeding toward trial on the
7 current schedule would unnecessarily direct the Participating Parties' resources to trial preparation.
8 An extension of the existing deadlines by approximately three months will allow the Participating
9 Parties to focus their resources on coordinating with one another and the Regional Board, in an effort
10 to finalize the settlement among the Participating Parties and avoid the need for trial.

11 NOW THEREFORE, the Participating Parties hereby stipulate to extend the existing
12 deadlines to the following dates:

- 13 1. Final pre-trial conference is reset to June 20, 2018, or at such time that is convenient for
14 the Court; and
- 15 2. Jury trial is reset for August 1, 2018, or at such time that is convenient for the Court.

16 Dated: January 26, 2018

Respectfully submitted,

17 Law Offices of Francis M. Goldsberry
18

19 By: /s/ Francis M. Goldsberry (as authorized on Jan. 25, 2018)
20 Francis M. Goldsberry

21 Attorneys for Counter Claimants Potter-Taylor & Co.; Potter, Long,
22 Adams & Taylor, Ltd.; Davis Center; Potter-Taylor, Inc. and Potter
Taylor & Scurfield, Inc.

23 Dated: January 26, 2018

Respectfully submitted,

24 Hartman King, PC
25

26 By: /s/ Jennifer Hartman King
27 Jennifer Hartman King

28 Attorneys for Counter Claimant City of Davis

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1 Dated: January 26, 2018

Respectfully submitted,

2 Koeller, Nebeker, Carlson & Haluck, LLP

3
4 By: /s/ Peter Dye (as authorized on Jan. 25, 2018)
Peter Dye

5 Attorneys for Counter Claimants The Davis Center, LLC; Emily A.
6 Stover, individually and as Trustee of the Stover Family Trust and
as Personal Representative for Melvin Stover (Deceased); and
7 Richard Albert Stinchfield, individually and as Trustee of the
Robert S. Stinchfield Separate Real Property Trust and as Trustee of
8 the Barbara Ellen Stinchfield Testamentary Trust

9 Dated: January 26, 2018

Respectfully submitted,

10 Schuering Zimmerman & Doyle LLP

11
12 By: /s/ Keith D. Chidlaw (as authorized on Jan. 25, 2018)
Keith D. Chidlaw

13 Attorneys for Counter Defendants Charles H. Lewis (Deceased) and
14 Jane W. Lewis (Deceased), Robert Zehnder, as Personal
Representative of Charles H. Lewis, and Estate of Charles H. Lewis
15 (Deceased)


16
17 **ORDER**

18 For good cause and pursuant to the above stipulation of the Participating Parties, IT IS
19 HEREBY ORDERED that:

- 20 1. Final pre-trial conference is reset to **June 18, 2018 at 1:30 p.m.:**
21 2. Jury trial is reset for **August 7, 2018 at 9:00 a.m.**

22
23 **IT IS SO ORDERED.**

24 Dated: January 26, 2018


25 WILLIAM B. SHUBB
26 UNITED STATES DISTRICT JUDGE