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10 Attorneys for Counter Claimant
11 CITY OF DAVIS

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

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

17 Plaintiffs,

18 v.

19 ROBERT D. RUSSELL, ET AL.,

20 Defendants,

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

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

ORDER

[LR 144]

Trial Date: April 23, 2019

21
22 AND RELATED COUNTER, CROSS AND
23 THIRD-PARTY CLAIMS.

27 **STIPULATION**

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

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

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

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

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

28 WHEREAS, on June 2, 2015, the Participating Parties entered into a further stipulation to

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

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

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

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

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

19 WHEREAS, on June 15, 2017, the Participating Parties transmitted various settlement
20 documents to the Regional Board, for its review and approval.

21 WHEREAS, on June 22, 2017, the Participating Parties entered into a stipulation agreeing
22 to substitute: 1) Robert Zehnder, as Personal Representative of Charles H. Lewis as a party to this
23 Action in place of Charles H. Lewis (Deceased) and Jane W. Lewis (Deceased) for purposes of
24 the City’s counter claims against Lewis only; and 2) the Estate of Charles H. Lewis (Deceased) as
25 a party to this Action in place of Charles H. Lewis (Deceased) and Jane W. Lewis (Deceased) for
26 purposes of the Landowner’s and Potter-Taylor’s respective counter claims against Lewis only
27 (Doc. No. 526).

28 WHEREAS, on June 22, 2017, in light of the Participating Parties’ progress in having

1 prepared the various settlement documents and efforts in the process to secure approval of the
2 settlement documents from the Regional Board, the Participating Parties entered into a further
3 stipulation to amend the scheduling order and extend the deadlines by three months (Doc. No.
4 527). On June 23, 2017, the Court entered an Order approving that stipulation (Doc. No. 529).
5 Under that Order, the trial in this matter was set to commence on January 30, 2018.

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

12 WHEREAS, on December 13, 2017, counsel for the City filed a Motion for Summary
13 Judgment or, In the Alternative, Summary Adjudication as to Cross-Claimants Jung Hang Suh
14 and Soo Jung Suh (Doc. No. 533) which was heard on February 5, 2018 (Doc. No. 538).

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

17 WHEREAS, at that time the Participating Parties had not yet reached agreement on the
18 final terms of the Agreement and Covenant Not to Sue (“CNS”) between the Regional Board, and
19 the Participating Parties, but continued their negotiations.

20 WHEREAS, on January 5, 2018, the Regional Board submitted material revisions and
21 changes to the CNS. On January 18, 2018, counsel for Landowners advised all parties to the
22 CNS that their clients rejected the Regional Board’s material revisions to the CNS and offered
23 alternative language.

24 WHEREAS, on January 25, 2018, in light of continued coordination between the
25 Participating Parties to negotiate the terms of the various settlement documents and the Regional
26 Board’s need for additional time to complete its review of the revised settlement documents, the
27 Participating Parties entered into a further stipulation to amend the scheduling order (Doc. No.
28 536).

1 WHEREAS, on January 26, 2018, the Court entered an Order approving the Stipulation
2 (Doc. No. 537). Under that Order, the trial in this matter was set to commence on August 7,
3 2018, and the pre-trial conference was reset to June 18, 2018.

4 WHEREAS, on February 6, 2018, the Court entered an Order granting the City's Motion
5 for Summary Judgment or, In the Alternative, Summary Adjudication as to Cross-Claimants Jung
6 Hang Suh and Soo Jung Suh (Doc. No. 539).

7 WHEREAS, on May 11, 2018, in light of continued coordination between the
8 Participating Parties to finalize the various settlement documents, and to avoid unnecessarily
9 directing the Participating Parties' resources to trial preparation, the Participating Parties entered
10 into a further stipulation to amend the scheduling order (Doc. No. 540).

11 WHEREAS, on May 14, 2018, the Court entered an Order approving the Stipulation (Doc.
12 No. 541). Under that Order, the trial in this matter was set to commence on January 23, 2019, and
13 the pre-trial conference was reset to October 22, 2018.

14 WHEREAS, on September 19, 2018, in light of the Participating Parties' continuing
15 efforts toward finalizing the various settlement documents between themselves as well as the
16 Regional Board, and in order to obtain final client approval of the near-final settlement
17 documents, the Participating Parties entered into a further stipulation to amend the scheduling
18 order (Doc. No. 542).

19 WHEREAS, on September 21, 2018, the Court entered an Order approving the Stipulation
20 (Doc. No. 543). Under that Order, the trial in this matter was set to commence on April 23, 2019,
21 and the pre-trial conference was reset to January 28, 2019.

22 WHEREAS, since the Court's September 21, 2018, Order resetting the trial date to April
23 23, 2019, the Participating Parties have finalized the various settlement documents and obtained
24 final client approval. At this stage, the final settlement documents have been transmitted to the
25 Participating Parties and the Regional Board for execution.

26 WHEREAS, due to the upcoming April 23, 2019, trial date, proceeding toward trial on the
27 current schedule would unnecessarily direct the Participating Parties' resources to trial preparation.
28 An extension of the existing deadlines by approximately two months will allow the Participating

1 Dated: January 7, 2019

Respectfully submitted,

2 Schuering Zimmerman & Doyle LLP

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4 By: /s/ Keith D. Chidlaw (as authorized on Jan. 4, 2019)
Keith D. Chidlaw

5 Attorneys for Counter Defendants Charles H. Lewis (Deceased) and
6 Jane W. Lewis (Deceased), Robert Zehnder, as Personal
7 Representative of Charles H. Lewis, and Estate of Charles H. Lewis
(Deceased)

8 **ORDER**

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

- 11 1. Final Pre-trial Conference is reset to **April 1, 2019 at 1:30 p.m.**
12 2. Jury Trial is reset for **June 25, 2019 at 9:00 a.m.**

13
14 **IT IS SO ORDERED.**

15 Dated: January 7, 2019

16 

17 **WILLIAM B. SHUBB**
18 **UNITED STATES DISTRICT JUDGE**