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Government Code Section 6103

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**

[PROPOSED] ORDER

[LR 144]

Trial Date: June 25, 2019

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

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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.
15 457) and approving the Stipulation (Doc. No. 460).

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

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

24 WHEREAS, on December 12, 2014, the Participating Parties entered into a further
25 stipulation to amend the scheduling order to allow time to develop a cost estimate and work plan
26 for the proposed remediation (Doc. No. 478). On the same day, the Court entered an Order
27 approving the Stipulation (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
2 the proposed remediation and to enter into possible mediation in an effort to resolve the case
3 (Doc. No. 480). On June 15, 2015, the Court entered an Order approving the Stipulation (Doc.
4 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 (“Regional Board”).

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 Regional Board, for its review and approval.

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

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

7 WHEREAS, on September 22, 2017, 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 revise settlement documents and secure approval of those terms by all
10 Participating Parties (Doc. No. 531). On the same date, the Court entered an Order approving the
11 Stipulation (Doc. No. 532). Under that Order, the trial in this matter was set to commence on
12 May 1, 2018.

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

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

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

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

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

1 536).

2 WHEREAS, on January 26, 2018, the Court entered an Order approving the Stipulation
3 (Doc. No. 537). Under that Order, the trial in this matter was set to commence on August 7,
4 2018, and the pre-trial conference was reset to June 18, 2018.

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

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

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

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

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

23 WHEREAS, on January 7, 2019, in light of the Participating Parties' progress in finalizing
24 the various settlement documents and obtaining final client approval and in order to allow the
25 Participating Parties and Regional Board time to execute the various settlement documents, the
26 Participating Parties entered into a further stipulation to amend the scheduling order (Doc. No.
27 544).

28 WHEREAS, on January 8, 2019, the Court entered an Order approving the Stipulation

1 (Doc. No. 545). Under that Order, the trial in this matter was set to commence on June 25, 2019,
2 and the pre-trial conference was reset to April 1, 2019.

3 WHEREAS, on February 14, 2019, the Court entered a Minute Order resetting the pre-
4 trial conference from April 1, 2019, to April 15, 2019 (Doc. No. 546).

5 WHEREAS, since the Court's January 8, 2019, Order resetting the trial date to June 25,
6 2019, the Participating Parties have been coordinating with their respective clients and the
7 Regional Board to obtain signatures on the various settlement documents. At this stage, the final
8 settlement documents are very close to full execution by the Participating Parties and the
9 Regional Board.

10 WHEREAS, due to the upcoming June 25, 2019, trial date, proceeding toward trial on the
11 current schedule would unnecessarily direct the Participating Parties' resources to trial
12 preparation. An extension of the existing deadlines by approximately four months will allow the
13 Participating Parties to focus their resources on finalizing execution of the various settlement
14 documents and coordinating on other final steps to facilitate the resolution of this litigation, such
15 as preparing a Joint Motion for Good Faith Settlement Determination, and avoid the need for trial.

16 NOW THEREFORE, the Participating Parties hereby stipulate to extend the existing
17 deadlines to the following dates:

- 18 1. Final pre-trial conference is reset to August 19, 2019, or at such time that is convenient
19 for the Court; and
- 20 2. Jury trial is reset for October 29, 2019, or at such time that is convenient for the Court.

21 Dated: March 26, 2019 Respectfully submitted,

22
23 Law Offices of Francis M. Goldsberry

24 By: /s/ Francis M. Goldsberry (as authorized on Mar. 26, 2019)
Francis M. Goldsberry

25 Attorneys for Counter Claimants Potter-Taylor & Co.; Potter, Long,
26 Adams & Taylor, Ltd.; Davis Center; Potter-Taylor, Inc. and Potter
27 Taylor & Scurfield, Inc.
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Dated: March 26, 2019 Respectfully submitted,

Hartman King, PC

By: /s/ Jennifer Hartman King
Jennifer Hartman King

Attorneys for Counter Claimant City of Davis

Dated: March 26, 2019 Respectfully submitted,

Koeller, Nebeker, Carlson & Haluck, LLP

By: /s/ Peter Dye (as authorized on Mar. 21, 2019)
Peter Dye

Attorneys for Counter Claimants The Davis Center, LLC; Emily A. 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

Dated: March 26, 2019 Respectfully submitted,

Schuering Zimmerman & Doyle LLP

By: /s/ Keith D. Chidlaw (as authorized on Mar. 25, 2019)
Keith D. Chidlaw

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

PROPOSED ORDER ON FOLLOWING PAGE

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[PROPOSED] ORDER

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

- 1. Final pre-trial conference is reset to **August 19, 2019 at 1:30 p.m.**
- 2. Jury trial is reset for **October 29, 2019 at 9:00 a.m.**

IT IS SO ORDERED.

Dated: April 1, 2019



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE