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CITY OF DAVIS

12 **UNITED STATES DISTRICT COURT**  
13  
14 **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: October 29, 2019

21  
22 AND RELATED COUNTER, CROSS AND  
23 THIRD-PARTY CLAIMS.  
24

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26  
27  
28 **STIPULATION**

00036410.1

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



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, on March 26, 2019, in light of the Participating Parties' continuing efforts in  
6 finalizing the various settlement documents and coordinating on other final steps to facilitate the  
7 resolution of this litigation, such as preparing a Joint Motion for Good Faith Settlement  
8 Determination, the Participating Parties entered into a further stipulation to amend the scheduling  
9 order (Doc. No. 547).

10 WHEREAS, on April 1, 2019, the Court entered an Order approving the Stipulation (Doc.  
11 No. 548). Under that Order, the trial in this matter was set to commence on October 29, 2019,  
12 and the pre-trial conference was reset to August 19, 2019.

13 WHEREAS, since the Court's April 1, 2019, Order resetting the trial date to October 29,  
14 2019, the Participating Parties have coordinated with their respective clients and the Regional  
15 Board to obtain signatures on the various settlement documents. At this stage, the final settlement  
16 documents are fully executed by the Participating Parties and the Regional Board, and the  
17 Participating Parties are finalizing the Joint Motion for Good Faith Settlement Determination that  
18 the Participating Parties will be filing with the Court.

19 WHEREAS, due to the upcoming October 29, 2019, trial date, proceeding toward trial on  
20 the current schedule would unnecessarily direct the Participating Parties' resources to trial  
21 preparation. An extension of the existing deadlines by approximately four months will allow the  
22 Participating Parties to focus their resources on finalizing the Joint Motion for Good Faith  
23 Settlement Determination, allow the motion to be heard by the Court and avoid the need for trial.

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1 NOW THEREFORE, the Participating Parties hereby stipulate to extend the existing  
2 deadlines to the following dates:

- 3 1. Final pre-trial conference is reset to December 16, 2019, or at such time that is  
4 convenient for the Court; and
- 5 2. Jury trial is reset for February 25, 2020, or at such time that is convenient for the  
6 Court.

7  
8 Dated: August 6, 2019

Respectfully submitted,

9 Law Offices of Francis M. Goldsberry

10  
11 By: /s/ Francis M. Goldsberry (as authorized on Aug 6, 2019)  
Francis M. Goldsberry

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

15 Dated: August 6, 2019

Respectfully submitted,

16 Hartman King, PC

17  
18 By: /s/ Jennifer Hartman King  
Jennifer Hartman King

19 Attorneys for Counter Claimant City of Davis

20  
21 Dated: August 6, 2019

Respectfully submitted,

22 Koeller, Nebeker, Carlson & Haluck, LLP

23  
24 By: /s/ Peter Dye (as authorized on Aug. 6, 2019)  
Peter Dye

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

1 Dated: August 6, 2019

Respectfully submitted,

2 Schuering Zimmerman & Doyle LLP

3  
4 By: /s/ Keith D. Chidlaw (as authorized on Aug. 6, 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 **December 9, 2019 at 1:30 p.m.**;  
12 2. Jury trial is reset for **February 25, 2020 at 9:00 a.m.**

13 **IT IS SO ORDERED.**

14 Dated: August 6, 2019



15 WILLIAM B. SHUBB

16 UNITED STATES DISTRICT JUDGE