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 United States of America

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13 **UNITED STATES DISTRICT COURT**  
 14 **EASTERN DISTRICT OF CALIFORNIA**  
 15 **SACRAMENTO DIVISION**

17 UNITED STATES OF AMERICA, and  
 CALIFORNIA DEPARTMENT OF TOXIC  
 18 SUBSTANCES CONTROL,

19 Plaintiffs,

20 vs.

21 STERLING CENTRECORP, INC., STEPHEN  
 22 P. ELDER, and ELDER DEVELOPMENT,  
 INC.,

23 Defendants.  
 24

Case No. 2:08-cv-02556- MCE-JFM

**STIPULATION AND ORDER TO  
 LITIGATE ENFORCMENT COSTS  
 AFTER THE CONCLUSION OF THE  
 PHASE II TRIAL ON OTHER RESPONSE  
 COSTS**

Trial Date: July 18, 2016  
 Judge: Hon. Morrison C. England, Jr.

[Complaint Filed: October 27, 2008]

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7 Attorneys for Plaintiff  
8 California Department of Toxic Substances Control

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14 Attorneys for Defendant  
15 Sterling Centrecorp, Inc.

16 STIPULATION TO LITIGATE ENFORCEMENT COSTS AFTER THE CONCLUSION OF THE  
17 PHASE II TRIAL ON OTHER RESPONSE COSTS

18 WHEREAS, on March 25, 2009, the Court entered the Bifurcation Order (ECF No. 26)  
19 separating the discovery and trial for defendants' liability ("Phase I") from the discovery and trial on  
20 plaintiffs' entitlement to response costs ("Phase II"), and;

21 WHEREAS, on September 29, 2014, the Court entered the Phase II Pretrial Scheduling  
22 Order (ECF No. 229) setting the deadline for Phase II discovery, except expert discovery, for  
23 September 18, 2015 and setting Phase II trial for July 18, 2016; and

24 WHEREAS, on August 19, 2015, the Court entered an Order (ECF No. 241) setting the  
25 designation of experts and exchange of expert reports for October 2, 2015; and

26 WHEREAS, Plaintiffs United States of America, on behalf of the Environmental Protection  
27 Agency ("EPA"), and the California Department of Toxic Substances Control ("DTSC")  
28

1 (collectively “Plaintiffs”) seek their response costs, including enforcement costs, through dates  
2 certain, in Phase II; and

3 WHEREAS, enforcement costs refer to all costs incurred by the United States Department of  
4 Justice, the costs of EPA attorneys’ direct labor on this litigation, all costs incurred by the California  
5 Attorney General’s Office representing DTSC in this matter, the cost of DTSC attorneys’ direct  
6 labor on this litigation, EPA and DTSC attorneys’ travel expenses related to this litigation, and  
7 Plaintiffs’ indirect costs associated with all of this direct labor;<sup>1</sup> and

8 WHEREAS, enforcement costs do not refer to any work by non-legal staff of EPA, DTSC, or  
9 their contractors related to this litigation; and

10 WHEREAS, enforcement costs are a subset of the response costs currently scheduled to be  
11 litigated in Phase II; and

12 WHEREAS, the exercise of proving the enforcement costs might disrupt Phase II because it  
13 may necessitate discovery of the actions of the attorneys who are litigating Phase II on behalf of  
14 Plaintiffs; and

15 WHEREAS, Plaintiffs and Sterling Centrecorp, Inc. (“Sterling”) (collectively “the Parties”) agree that the most efficient means of resolving issues related to Plaintiffs’ claims for enforcement  
16 costs is to litigate those claims through motions practice after the Phase II trial has concluded; and

17  
18 WHEREAS, on August 24, 2015, counsel for the United States of America, Patricia Hurst,  
19 contacted Stephen P. Elder, and explained to him what Plaintiffs seek with this Stipulation, and Mr.  
20 Elder, on behalf of himself and Elder Development, Inc., stated that he did not oppose the relief  
21 sought through this Stipulation and Proposed Order, but Mr. Elder has not seen a copy of the  
22 Stipulation and Proposed Order and claims he has no means to review the Stipulation and Proposed  
23 Order.

24  
25 <sup>1</sup> The Department of Justice intends to seek all enforcement costs it incurred through the close  
26 of Phase II trial. EPA plans to seek all enforcement costs it incurred through November 30, 2012.  
27 DTSC plans to seek all enforcement costs attributable to DTSC attorneys through November 4,  
28 2014. In addition, DTSC intends to seek all enforcement costs attributable to the representation of  
DTSC in this matter by the California Attorney General’s Office that are incurred through the close  
of Phase II trial. The Department of Justice, EPA, the California Attorney General’s Office, and  
DTSC will seek the costs incurred after those dates in a subsequent proceeding as provided for by 42  
U.S.C. § 9613(g)(2).

1 NOW THEREFORE, the Parties hereby jointly stipulate and respectfully request that the  
2 Court order that the Parties shall not put on evidence of, or otherwise dispute, enforcement costs  
3 during Phase II trial or pre-trial preparations, and shall not seek or be required to respond to  
4 discovery on enforcement costs during Phase II proceedings; instead, all issues relating to  
5 enforcement costs shall be addressed by motions practice after the Phase II trial has concluded, and  
6 according to the schedule that follows:

7 On or before **sixty days** after the conclusion of the Phase II trial, Plaintiffs shall jointly file a  
8 motion seeking enforcement costs;

9 On or before **sixty days** after Plaintiffs' deadline to file a motion seeking enforcement costs,  
10 if Sterling decides a response is necessary, Sterling shall file a response in opposition to Plaintiffs'  
11 motion for enforcement costs;

12 Sterling will have an opportunity to take discovery on Plaintiffs' enforcement costs following  
13 the Phase II trial until **sixty days** after Plaintiffs' deadline to file a motion seeking enforcement  
14 costs, however, Plaintiffs do not waive their right to assert any privilege or any objection that could  
15 apply to any part of Sterling's discovery request;

16 Plaintiffs do not agree to submit their attorneys for depositions in this matter and do not  
17 waive their right to seek a protective order barring any depositions they deem objectionable;

18 On or before **twenty-one days** after Sterling's deadline to file its response, if Plaintiffs  
19 decide a reply is necessary, Plaintiffs shall jointly file a reply to any response in opposition filed by  
20 Sterling; and

21 If the Court does not enter the proposed order, the Parties agree that Plaintiffs will have the  
22 right to disclose documentation of their enforcement costs after the September 18, 2015 close of fact  
23 discovery deadline and Plaintiffs' experts will have the opportunity to supplement their reports on  
24 enforcement costs after the October 2, 2015 deadline for exchange of reports.

25  
26 SO STIPULATED.  
27  
28

1 **For Plaintiff Department of Toxic Substances Control**

2 KAMALA D. HARRIS  
3 Attorney General of California  
4 SUSAN FIERING  
5 Supervising Deputy Attorney General

6 09/03/2015  
7 DATED

8 /s/ Timothy E. Sullivan  
9 TIMOTHY E. SULLIVAN  
10 Deputy Attorney General  
11 1515 Clay St., 20th Floor  
12 P.O. Box 70550  
13 Oakland, CA 94612

14 **For Defendant Sterling Centrecorp, Inc.**

15 09/03/2015  
16 DATED

17 /s/ Gary J. Smith  
18 GARY J. SMITH  
19 Beveridge & Diamond, P.C.  
20 456 Montgomery Street, Suite 1800  
21 San Francisco, CA 94104

22 *Counsel for Plaintiff Department of Toxic Substances Control and Counsel for Defendant*  
23 *Sterling Centrecorp, Inc. have authorized Plaintiff the United States of America to file this*  
24 *Stipulation on behalf of these Parties. Plaintiff the United States of America will retain documents*  
25 *evidencing this authorization.*

26 **For Plaintiff United States of America**

27 09/03/2015  
28 DATED

/s/ PETER KRZYWICKI  
PATRICIA L. HURST  
GABRIEL ALLEN  
PETER KRZYWICKI  
Environmental Enforcement Section  
PAUL CIRINO  
Environmental Defense Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, DC 20044

1 ORDER

2  
3 In view of this Stipulation, the Court finds that good cause exists for issuance of an Order  
4 that the Parties shall not put on evidence of, or otherwise dispute, enforcement costs during Phase II  
5 trial and pre-trial preparation, and shall not seek or be required to respond to discovery on  
6 enforcement costs during Phase II proceedings; and instead, all issues relating to enforcement costs  
7 shall be addressed by motions practice after the Phase II trial has concluded, and according to the  
8 schedule that follows:

9 On or before **sixty days** after the conclusion of the Phase II trial, Plaintiffs shall jointly file a  
10 motion seeking enforcement costs;

11 On or before **sixty days** after Plaintiffs' deadline to file a motion seeking enforcement costs,  
12 if Sterling decides a response is necessary, Sterling shall file a response in opposition to Plaintiffs'  
13 motion for enforcement costs;


14 Sterling will have an opportunity to take discovery on Plaintiffs' enforcement costs following  
15 the Phase II trial until **sixty days** after Plaintiffs' deadline to file a motion seeking enforcement  
16 costs, however, Plaintiffs do not waive their right to assert any privilege or any objection that could  
17 apply to any part of Sterling's discovery request;

18 Plaintiffs do not agree to submit their attorneys for depositions in this matter and do not  
19 waive their right to seek a protective order barring any depositions they deem objectionable; and

20 On or before **twenty-one days** after Sterling's deadline to file its response, if Plaintiffs  
21 decide a reply is necessary, Plaintiffs shall jointly file a reply to any response in opposition filed by  
22 Sterling.

23 IT IS SO ORDERED.

24 Dated: September 8, 2015

25  
26   
27 MORRISON C. ENGLAND, JR., CHIEF JUDGE  
28 UNITED STATES DISTRICT COURT