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

15 UNITED STATES OF AMERICA, and
 CALIFORNIA DEPARTMENT OF TOXIC
 16 SUBSTANCES CONTROL,

17 Plaintiffs,

18 vs.

19 STERLING CENTRECORP INC., STEPHEN P.
 20 ELDER, and ELDER DEVELOPMENT, INC.,

21 Defendants.

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

**STIPULATION AND ORDER STAYING
 DEADLINES FOR LITIGATION OF
 ENFORCMENT COSTS TO ALLOW FOR
 SETTLEMENT DISCUSSIONS**

Trial Date: Not Scheduled
 Judge: Hon. Morrison C. England, Jr.

[Complaint Filed: October 27, 2008]

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13

14 **STIPULATION STAYING DEADLINES FOR LITIGATION OF ENFORCEMENT COSTS**
15 **TO ALLOW FOR SETTLEMENT DISCUSSIONS**

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

19 WHEREAS, on September 8, 2015, the Court signed a Stipulation and Order (ECF No. 244)
20 providing that (a) on or before 60 days after the conclusion of the Phase II trial, Plaintiffs United
21 States of America and California Department of Toxic Substances Control ("Plaintiffs") shall jointly
22 file a motion seeking enforcement costs, which are a subset of the response costs being litigated in
23 this Phase II; (b) on or before 60 days after Plaintiffs' deadline to file a motion seeking enforcement
24 costs, if Defendant Sterling Centrecorp Inc. ("Sterling") decides a response is necessary, Sterling
25 shall file a response in opposition to Plaintiffs' motion for enforcement costs; and (c) on or before 21
26 days after Sterling's deadline to file its response, if Plaintiffs decide a reply is necessary, Plaintiffs
27 shall jointly file a reply to any response in opposition filed by Sterling. The Court's order further
28

1 provided that (d) Sterling will have an opportunity to take discovery on Plaintiffs' enforcement costs
2 following the Phase II trial until 60 days after Plaintiffs' deadline to file a motion seeking
3 enforcement costs, however, Plaintiffs do not waive their right to assert any privilege or any
4 objection that could apply to any part of Sterling's discovery request; and (e) Plaintiffs do not agree
5 to submit their attorneys for depositions in this matter and do not waive their right to seek a
6 protective order barring any depositions they deem objectionable;

7 WHEREAS, on September 19, 20 and 21, 2016, the Court granted all of Plaintiffs' motions
8 for summary judgment (ECF Nos. 296, 297, 298), denied all of Defendant Sterling Centrecorp,
9 Inc.'s motions for summary judgment (ECF Nos. 297, 298), and denied Plaintiffs' motion *in limine*
10 as moot (ECF No. 299), and thus, resolved all matters that could have been tried in Phase II pursuant
11 to the Parties' stipulation, leaving only the enforcement costs portion of Plaintiffs' response costs
12 unresolved;

13 WHEREAS, under the Court's September 8, 2015 Order, Plaintiffs must file a motion
14 seeking an award of enforcement costs no later than November 20, 2016, Sterling must file a
15 response no later than January 19, 2017, and Plaintiffs must file a reply no later than February 9,
16 2017;

17 WHEREAS, Plaintiffs and Sterling seek a stay of the briefing deadlines imposed by the
18 Court's September 8, 2015 Order so that they may explore a negotiated resolution of Plaintiffs'
19 enforcement costs; and

20 WHEREAS, on October 18, 2016, counsel for the United States of America, Patricia Hurst,
21 contacted Defendant Stephen P. Elder, and explained to him what Plaintiffs and Sterling seek with
22 this Stipulation and Proposed Order, and Mr. Elder did not oppose relief sought through this
23 Stipulation and Proposed Order. Ms. Hurst emailed this Stipulation and Proposed Order to Mr. Elder
24 the same day;

25 NOW THEREFORE, Plaintiffs and Sterling (collectively "the Parties") hereby jointly
26 stipulate and respectfully request that the Court order that the deadlines in the Court's September 8,
27 2015 Order are stayed for a period of 60 days from the Court's entry of this Order. During the stay
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1 the Parties shall not put on evidence of, or otherwise dispute, enforcement costs, and shall not seek
2 or be required to respond to discovery on enforcement costs. The stipulated schedule for briefing and
3 discovery related to Plaintiffs' motion for enforcement costs shall commence when the stay ends.

4 The stay does not alter Plaintiffs' right to assert any privilege or any objection that could apply to
5 Sterling's discovery, or Plaintiffs' right to seek a protective order barring any depositions they deem
6 objectionable.

7 SO STIPULATED.

8
9 **For Plaintiff Department of Toxic Substances Control**

10 October 19, 2016

11 /s/ John W. Everett
12 JOHN W. EVERETT
13 Deputy Attorney General
14 600 West Broadway, Suite 1800
15 San Diego, CA 92101

16
17 **For Defendant Sterling Centrecorp, Inc.**

18 October 19, 2016

19 /s/ Gary J. Smith
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21 Beveridge & Diamond, P.C.
22 456 Montgomery Street, Suite 1800
23 San Francisco, CA 94104

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

28
For Plaintiff United States of America

October 19, 2016

/s/ Patricia L. Hurst
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ORDER

In view of this Stipulation, the Court finds that good cause exists for issuance of an Order that the deadlines in the Court's September 8, 2015 Order are stayed until December 21, 2016. During the stay, the Parties shall not put on evidence of, or otherwise dispute, enforcement costs, and shall not seek or be required to respond to discovery on enforcement costs. The stay does not alter Plaintiffs' right to assert any privilege or any objection that could apply to Sterling's discovery, or Plaintiffs' right to seek a protective order barring any depositions they deem objectionable.

The stipulated schedule for briefing and discovery related to Plaintiffs' motion for enforcement costs shall commence when the stay ends on December 21, 2016. Accordingly, if the enforcement costs portion of these proceedings remains unresolved at that time, Plaintiffs' deadline for filing a joint motion for such costs is February 21, 2017. Defendant Sterling's response, if any, to that motion must be filed not later than April 21, 2017 and Plaintiffs' reply is due on May 12, 2017.

IT IS SO ORDERED.

Dated: October 21, 2016


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE