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6 Attorneys for Defendant
 Sterling Centrecorp Inc.

8 **UNITED STATES COURT**
 9 **EASTERN DISTRICT OF CALIFORNIA**
 10 **SACRAMENTO DIVISION**

11 UNITED STATES OF AMERICA, and
 12 CALIFORNIA DEPARTMENT OF TOXIC
 SUBSTANCES CONTROL,

13 Plaintiffs,

14 vs.

15 STERLING CENTRECORP INC., STEPHEN P.
 16 ELDER, and ELDER DEVELOPMENT, INC.,

17 Defendants.

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

**STIPULATION AND ORDER
 GRANTING ADDITIONAL
 DISCOVERY RELATING TO
 RECOVERY OF ENFORCEMENT
 COSTS**

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

[Complaint Filed: October 27, 2008]

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

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

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

9 WHEREAS, the Court has resolved all matters that could have been tried in Phase II
10 pursuant to the Parties' stipulation, leaving only the enforcement costs portion of Plaintiffs' response
11 costs unresolved;

12 WHEREAS, on October 24, 2016, the Court signed a Stipulation and Order (ECF No. 301)
13 staying the deadlines in the Court's September 8, 2015 Order until December 21, 2016 to provide the
14 Parties time to negotiate a settlement of enforcement costs. The stipulated schedule for briefing and
15 discovery related to Plaintiffs' motion for enforcement costs would commence when the stay ended
16 on December 21, 2016 if the Parties were unable to settle the issue of enforcement costs;

17 WHEREAS, the Parties did not settle the issue of enforcement costs and Plaintiffs' deadline
18 for filing a joint motion for recovery of enforcement costs is February 21, 2017. Sterling's
19 opposition to such a motion, if any, is due April 21, 2017 and Plaintiffs' joint reply is due on May
20 12, 2017;

21 WHEREAS, Plaintiffs and Sterling wish to agree to limit the number of document requests
22 that may be served and increase the number of interrogatories that may be served beyond the limits
23 contained in Federal Rule of Civil Procedure 33 and the Court's Scheduling Orders;

24 IT IS HEREBY STIPULATED BY AND BETWEEN PLAINTIFFS AND STERLING, BY
25 AND THROUGH THEIR UNDERSIGNED COUNSEL, THAT:

- 26 1. Sterling and Plaintiffs may each serve up to 25 interrogatories and 25 document
27 requests relating to enforcement costs.
- 28 2. Sterling and Plaintiffs agree not to depose each other's timekeepers. Sterling and

1 Plaintiffs retain their rights to depose any retained expert witnesses, as that term is used in the
2 Court's Phase II Pretrial Scheduling Order, that Sterling or Plaintiffs rely upon to support or oppose
3 Plaintiffs' motion for enforcement costs.

4 3. Plaintiffs agree that billing records, narratives, and cost documentation voluntarily
5 shared with Sterling during settlement discussion and marked privileged and confidential may be
6 filed with the Court. Sterling agrees to file these documents under seal with the Court.

7 4. Should Plaintiffs seek discovery of Sterling and require additional time to prepare
8 their reply brief, Sterling will not oppose Plaintiffs' request to stay their reply deadline up to 45 days
9 after Sterling serves its response to written discovery and any retained expert witnesses offered by
10 Sterling have been deposed.

11
12 For Defendant Sterling Centrecorp, Inc.

13
14 January 31, 2017
15 DATED

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

17 For Plaintiff United States of America

18
19 January 31, 2017
20 DATED

19 /s/ Patricia L. Hurst
20 PATRICIA L. HURST
21 Senior Counsel
22 Environmental Enforcement Section
23 Environment and Natural Resources Division
24 United States Department of Justice
25 PO Box 7611
26 Washington, DC 20044-7611

24 For Plaintiff Department of Toxic Substances Control

25
26 XAVIER BECERRA
27 Attorney General of California
28 TIMOTHY R. PATTERSON
Supervising Deputy Attorney General

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January 31, 2017
DATED

/s/ John Everett
JOHN EVERETT
Deputy Attorney General
600 West Broadway, Suite 1800
San Diego, CA 92186

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

ORDER

In accordance with the foregoing stipulation, and good cause appearing, **IT IS SO ORDERED.**

Dated: February 7, 2017


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE