

1 BENNETT J. LEE (Bar No. 230482)
 2 ANDREW VAN ORNUM (Bar No. 214040)
 3 VARELA LEE METZ & GUARINO, LLP
 333 Bush Street, Suite 1500
 4 San Francisco, CA 94104
 Telephone: 415-623-7000
 Facsimile: 415-623-7001
 Email: avanornu@vlmglaw.com

5 Attorneys for Plaintiff
 6 ARCH INSURANCE COMPANY

7
 8 UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

10 ARCH INSURANCE COMPANY,
 11 Plaintiff,
 12 vs.
 13 SIERRA EQUIPMENT RENTAL, INC., et
 14 al.
 15 Defendants

Case No. 2:12-CV-00617 KJM (KJN)

**STIPULATION AND EX PARTE
 APPLICATION TO CONTINUE TRIAL
 DATE AND PRE-TRIAL CONFERENCE
 DATES; AND ORDER**

16
 17
 18 Pursuant to Rule 16(b)(4) of the Federal Rules of Civil Procedure, which requires parties
 19 to seek leave of court for modifications to scheduling orders, and Local Rule 144, Plaintiff Arch
 20 Insurance Company (“Arch”) and Defendant Karrie Kindell (“Kindell”), through their respective
 21 attorneys of record, hereby submit the following stipulation and ex parte application to continue
 22 the Trial Date, Final Pre-Trial Conference Date, deadline for joint pre-trial statement, and trial
 23 brief deadlines.

24 **Recitals**

- 25 1. On February 4, 2016, the Court issued a Status (Pretrial Scheduling) Order that set
 26 the following case deadlines: joint pretrial conference statement – June 24, 2016;
 27 Final Pre-Trial Conference -- July 15, 2016; Trial briefs – August 15, 2016 and
 28 Jury Trial Date – August 29, 2016.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. The defendants currently in the case are Kindell; Sierra Equipment Rentals, Inc. (“Sierra”), a Nevada corporation who is in forfeited status with the Secretary of State and unrepresented by counsel; and Carolyn Scarola, as trustee of the Dry Creek Ranches Trust (“Trust”), who is also currently unrepresented.
3. The undersigned parties agree that good cause exists for the continuance of the above trial and pre-trial dates for the following reasons:
 - a. Arch’s motion for summary judgment against Sierra is currently pending before the Court, and even if that motion does not resolve the case as to Sierra, Sierra is a corporation unrepresented by counsel and is in a forfeited status such that it cannot defend the action;
 - b. Kindell and Arch are in the process of executing a settlement agreement that is expected to be accomplished shortly;
 - c. The only remaining party is the Trust, who is currently unrepresented by counsel. Further, the Trust’s trustee, Ms. Scarola, who appeared in this action, claims that she has resigned as trustee of the Trust. Furthermore, the Trust’s assets have been determined by judgment to be assets of the Chapter 7 Bankruptcy estate of Melvin Weir, in connection with Adversary Proceeding number 13-03232, in Northern District Bankruptcy Court Case number 13-10048. See Attachment A to this Stipulation and Affidavit.
 - d. A stipulation was not obtained from Sierra because it is out of business and unrepresented. Counsel for Arch contacted Scarola and spoke to her and her personal counsel to advise of the joint pre-trial conference statement deadline and to discuss the case, but the undersigned was advised that Ms. Scarola had resigned as trustee of the Trust. At this point it is unclear as to the legal status of the Trust or its trustee, Scarola.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Stipulation and Ex Parte Application

Accordingly, Arch and Kindell hereby stipulate, agree and request the following adjustment in the pre-trial schedule:

1. To continue the deadline for submission of joint pre-trial statements to at least August 5, 2016, by which time the undersigned parties expect Kindell to have been dismissed from the action, obviating any further involvement of her in this Action;
2. To continue the pre-trial conference to at least August 29, 2016;
3. To continue the deadline for submission of trial briefs to a date to be determined at the pre-trial conference; and
4. To vacate the current trial date and have a new trial date set at the pre-trial conference.

IT IS SO STIPULATED AND REQUESTED.

Dated: June 29, 2016

VARELA, LEE, METZ
& GUARINO, LLP

By: /s/ Andrew Van Ornum 6/23/16
Andrew Van Ornum
Attorneys for Plaintiff
ARCH INSURANCE COMPANY

Dated: June 29, 2016

LAW OFFICE OF ANDREW R. WIENER

By: /s/ Andrew Wiener 6/23/16
ANDREW R. WIENER, ESQ.
Attorneys for Defendant KARRIE
KINDELL

1 **Affidavit of Andrew Van Ornum**

2 I, Andrew Van Ornum, declare:

3 1. I am an attorney at law licensed to practice in the State of California and in the
4 United States District Court for the Eastern District of California. I am a partner in the law firm
5 of Varela, Lee, Metz & Guarino, LLP, attorneys of record for Plaintiff Arch Insurance Company
6 (“Arch”). I have personal knowledge of the facts set forth herein, unless otherwise indicated, and
7 if called as a witness, I could and would competently testify thereto.

8 2. Counsel for Kindell and the undersigned have reached a settlement and are in
9 process of executing a settlement agreement.

10 3. Attached as Attachment “A” is a copy of the judgment entered against the Trust
11 declaring that the Trust’s assets were assets of the Chapter 7 Bankruptcy estate of Melvin Weir, in
12 connection with Adversary Proceeding number 13-03232, in Northern District Bankruptcy Court
13 Case number 13-10048.

14 4. I called former counsel for the Trust on June 21, 2016 to request status on the Ms.
15 Scarola and the Trust in connection with this litigation. Counsel was unavailable.

16 5. I spoke to Carolyn Scarola on June 22, 2016. She advised that I must speak to
17 former counsel or her personal counsel. Her personal counsel called me and advised that Ms.
18 Scarola resigned as trustee of the Trust but that he did not represent her. He advised that former
19 counsel for the Trust may contact me next week.

20 6. Given the status of the pending summary judgment motion against Sierra and
21 Sierra’s unrepresented and forfeited status, the Trust status and pending settlement progress, it
22 appears that a trial is unlikely and unnecessary as currently scheduled. Based on those same
23 considerations, it appears that no opposition will be filed to this application.
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

By: /s/ Andrew Van Ornum 6/23/16
 Andrew Van Ornum

1 **ORDER**

2 Having read and considered the parties' Stipulation and Ex Parte Application,

3 IT IS HEREBY ORDERED THAT:

- 4
- 5 1. The deadline for submission of joint pre-trial statements shall be August 12, 2016;
 - 6 2. The Final Pre-Trial Conference is set for August 26, 2016 at 10:00 a.m.; and
 - 7 3. The Trial Date of August 29, 2016 and the deadline for trial briefs are hereby vacated. A
8 new trial date and associated deadlines shall be set at the Final Pre-Trial Conference.

9 **IT IS SO ORDERED.**

10 Dated: February 29, 2016

11 
12 _____
13 UNITED STATES DISTRICT JUDGE
14