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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF CALIFORNIA
12 SACRAMENTO DIVISION

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14 **CALIFORNIA DEPARTMENT OF TOXIC**
SUBSTANCES CONTROL and the TOXIC
15 **SUBSTANCES CONTROL ACCOUNT,**

16 Plaintiffs,

17 v.

18 **JIM DOBBAS, INC., a California**
19 **corporation; CONTINENTAL RAIL, INC.,**
20 **a Delaware corporation; DAVID VAN**
OVER, individually; PACIFIC WOOD
21 **PRESERVING, a dissolved California**
22 **corporation; WEST COAST WOOD**
PRESERVING, LLC., a Nevada limited
23 **liability company; and COLLINS &**
AIKMAN PRODUCTS, LLC, a Delaware
limited liability company,

24 Defendants.

25
26 **AND RELATED COUNTERCLAIMS AND**
27 **CROSS CLAIMS**
28

2:14-cv-00595-WBS-EFB

STIPULATION REQUESTING
EXTENSION OF CUT-OFF DATES AND
TRIAL; DECLARATION OF LAURA J.
ZUCKERMAN IN SUPPORT THEREOF;
[PROPOSED] ORDER

Trial Date: January 4, 2017

Action Filed: March 3, 2014

1 Plaintiffs the State of California Department of Toxic Substances Control and the Toxic
2 Substances Control Account (collectively, "DTSC"), through their attorneys, and individual
3 defendant David Van Over, acting *in pro per* ("Van Over"), hereby submit this stipulation
4 requesting that the Court issue an order extending all court-ordered deadlines for four (4) months
5 to permit the parties to undertake actions necessary to settle this litigation.

6 The foregoing Stipulation is based on the following facts:

7 1. In this action under the Comprehensive Environmental Response, Compensation, and
8 Liability Act, 42 U.S.C. § 9601 ("CERCLA"), DTSC seeks to recover response costs it incurred
9 or expects to incur in response to the release and/or threatened release of hazardous substances at,
10 around, and/or beneath the property located at 147 A Street, Elmira, Solano County, CA,
11 identified by Solano County Assessor's Parcel Numbers 142-010-130, 142-010-140 and 142-042-
12 010 ("the Site") from six (6) defendants. The Court has entered and approved consent decrees
13 resolving the liability of two defendants in this action and has entered default judgments against
14 three (3) others. Van Over is the current owner and operator of the Site, and he is the last
15 remaining defendant in the case.

16 2. The parties have been engaged in settlement discussions. Zuckerman Declaration, ¶
17 2. Van Over has asserted an inability to pay any response costs owed to DTSC, and has agreed to
18 submit documentation supporting an inability to pay claim by January 22, 2016. Zuckerman
19 Declaration, ¶ 3. DTSC will evaluate Van Over's financial documentation. *Id.* If Van Over's
20 financial documentation substantiates his inability to pay response costs claim, DTSC anticipates
21 the parties will enter into a proposed consent decree to memorialize their settlement. *Id.*

22 3. For its CERCLA settlements, DTSC follows section 122(h) of CERCLA, and
23 conducts a thirty (30) day public review and comment period on the proposed consent decree
24 before moving for its approval by the Court. 42 U.S.C § 9622(h). Zuckerman Declaration, ¶ 5.
25 A continuance of approximately four (4) months will allow sufficient time for the parties to
26 evaluate Van Over's financial documentation, engage in settlement discussions, publish and
27 notice any proposed consent decree entered into with Van Over for public comment, comply with

1 the statutorily required public comment period for the proposed consent decree, address public
2 comments, and file a noticed motion for judicial approval of a settlement with Van Over. *Id.*

3 3. The parties prefer to expend their available resources focusing on settlement rather
4 than conducting discovery and litigating the matter. Zuckerman Declaration, ¶ 4. The parties
5 further agree that it would be mutually beneficial, and that it would conserve the judicial
6 resources of this Court, to continue the discovery, pretrial, and trial dates by approximately four
7 (4) months in order that the parties may conclude their settlement discussions. *Id.*

8 4. These parties have made no prior request to extend the discovery or trial deadlines.
9 Zuckerman Declaration, ¶ 6.

10 5. Based on the foregoing, DTSC and Van Over hereby jointly request that the Court
11 enter an order continuing the remaining court deadlines for approximately four (4) months as
12 follows:

- 13 A. **Fact Discovery Cutoff** – from March 30, 2016 to August 3, 2016.
- 14 B. **Expert Report Due Date** – from April 29, 2016 to August 31, 2016.
- 15 C. **Expert Discovery Cutoff** – from June 30, 2016 to October 31, 2016.
- 16 D. **Motion Filing Deadline** – from September 2, 2016 to January 6, 2017.
- 17 E. **Final Pretrial Conference** – from November 7, 2016 to March 13, 2017.

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F. **Trial** – from January 4, 2017 to May 10, 2017.

IT IS SO STIPULATED.

Dated: _____1/19/16_____

KAMALA D. HARRIS
Attorney General of California

/s/

LAURA J. ZUCKERMAN
Deputy Attorney General
*Attorneys for Plaintiffs State of California
Department of Toxic Substances Control and
Toxic Substances Account*

Dated: __1/14/16_____

DAVID VAN OVER
Defendant

/s/ _____
DAVID VAN OVER

[PROPOSED] ORDER

IT IS ORDERED that the deadlines for the above-captioned case are extended as follows:

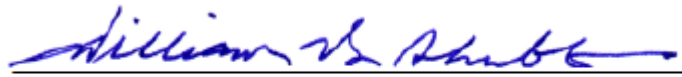
- A. **Fact Discovery Cutoff** – from March 30, 2016 to August 3, 2016.
- B. **Expert Report Due Date** – from April 29, 2016 to August 31, 2016.
- C. **Expert Discovery Cutoff** – from June 30, 2016 to October 31, 2016.
- D. **Motion Filing Deadline** – from September 2, 2016 to January 6, 2017.
- E. **Final Pretrial Conference** – from November 7, 2016 to March 13, 2017 at

1:30 p.m.

- F. **Trial** – from January 4, 2017 to May 9, 2017 at 9:00 a.m.

IT IS SO ORDERED.

Dated: January 19, 2016



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

DECLARATION OF LAURA J. ZUCKERMAN

I, Laura J. Zuckerman, declare as follows:

1. I am a Deputy Attorney General with the California Department of Justice, Office of the Attorney General. In that capacity, I am one of the attorneys for plaintiffs California Department of Toxic Substances Control and the Toxic Substances Control Account (collectively, "DTSC") in this action. I have personal knowledge of the facts stated herein, and, if called to do so, could and would testify competently thereto.

2. DTSC and defendant David Van Over ("Van Over"), the last remaining defendant in this action, have been engaged in settlement discussions in an effort to resolve this matter without further litigation.

3. Van Over is representing himself *in pro per*. Van Over has asserted an inability to pay any response costs owed to DTSC, and has agreed to submit documentation supporting an inability to pay claim by January 22, 2016. DTSC will evaluate Van Over's financial documentation. If Van Over's financial documentation substantiates his inability to pay response costs claim, DTSC anticipates the parties will enter into a proposed consent decree to memorialize their settlement.

4. The parties would prefer to expend their available resources focusing on settlement rather than conducting discovery and litigating the matter. The parties have discussed and agreed that it would be mutually beneficial, and would conserve the judicial resources of this Court, to continue the discovery, pretrial, and trial dates by approximately four (4) months in order that the parties may conclude their settlement discussions.

5. For its CERCLA settlements, Plaintiffs follow section 122(h) of CERCLA, and conduct a thirty (30) day public review and comment period on the proposed consent decree before moving for its approval by the Court. 42 U.S.C. § 9622(h). A continuance of approximately four (4) months will allow sufficient time for the parties to engage in settlement discussions and publish and notice any proposed consent decree entered into for public comment, comply with the statutorily required public comment period for the proposed consent decree,

1 address public comments, and file a noticed motion for judicial approval of any settlement with
2 Van Over.

3 6. These parties have made no prior request to extend the discovery or trial deadlines.

4 I declare under penalty of perjury that the foregoing is true and correct. Executed on
5 _____, at Oakland, California.

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Laura J. Zuckerman

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