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10 Attorneys for Defendant  
11 BASF CORPORATION

12 UNITED STATES DISTRICT COURT  
13 EASTERN DISTRICT OF CALIFORNIA

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15 SACRAMENTO SUBURBAN WATER  
DISTRICT,

16 Plaintiff,

17 v.

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19 ELEMENTIS CHROMIUM  
INCORPORATED, ET AL.,

20 Defendants.  
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Case No. 2:17-cv-01353 KJM GGH

**STIPULATION TO TREAT NON-  
GOVERNMENT DEFENDANTS' RULE  
12(b)(6) MOTIONS TO DISMISS AS  
APPLICABLE TO PLAINTIFF'S  
SECOND AMENDED COMPLAINT; AND  
ORDER**

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1 Plaintiff Sacramento Suburban Water District (“Sacramento Suburban” or “Plaintiff”)  
2 and Defendants Elementis Chromium Incorporated, Occidental Chemical Corporation,  
3 Honeywell International, Inc., BASF Corporation, PPG Industries, Inc. sued as PPG  
4 Incorporated, E.I. Du Pont de Nemours and Company, Univar Inc., Univar USA, Inc., Luxfer  
5 Holdings PLC, Sigma-Aldrich Corporation, and The Dow Chemical Company (together the  
6 “Non-Government Defendants”), in the above-captioned matter, through their undersigned  
7 counsel, hereby stipulate and agree to the following:

8 **I. Recitals**

9 1. *Whereas* Plaintiff Sacramento Suburban filed its First Amended Complaint  
10 (“FAC”) in the above-captioned matter on July 12, 2017 (*see* Dkt. No. 4).

11 2. *Whereas* the Non-Government Defendants filed a Rule 12(b)(6) Motion to  
12 Dismiss the Nuisance, Trespass, and Utility Tampering Causes of Action in Plaintiff’s FAC on  
13 September 18, 2017 (*see* Dkt. No. 27).

14 3. *Whereas* Defendants Honeywell International Inc. and Univar USA Inc. filed a  
15 Rule 12(b)(6) Motion to Dismiss Plaintiff’s FAC for failure to state a claim on September 25,  
16 2017 (*see* Dkt. No. 45).

17 4. *Whereas* Plaintiff subsequently filed its Second Amended Complaint (“SAC”) on  
18 March 20, 2018 after obtaining the consent of all defendants (*see* Dkt. No. 74; *see also* Dkt. No.  
19 73, Stipulation and Proposed Order for Staying Actions and to File Amended Complaint by  
20 Sacramento Suburban Water District).

21 5. *Whereas* Plaintiff’s SAC as to the Non-Government Defendants is identical to  
22 Plaintiff’s FAC. Plaintiff did not include any additional causes of action against the Non-  
23 Government Defendants in its SAC, nor did Plaintiff modify or amend any of its causes of action  
24 previously asserted in its FAC.

25 6. *Whereas* Defendants’ deadline to respond to Plaintiff’s SAC is April 3, 2018. *See*  
26 Fed. R. Civ. P. 15(a)(3).

27 7. *Whereas* this Court may, in its discretion, treat Non-Government Defendants’  
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1 motions to dismiss as to Plaintiff's FAC (Dkt. Nos. 27 and 45) as if they were filed in response  
2 to Plaintiff's SAC. *See DeFrees v. Kirkland*, No. CV 11-4272 GAF (SPX), 2012 WL 12885114,  
3 at \*13 (C.D. Cal. July 20, 2012), *aff'd in part, remanded in part*, 579 F. App'x 538 (9th Cir.  
4 2014) (“[D]efendants should not be required to file a new motion to dismiss simply because an  
5 amended pleading was introduced while their motion was pending. If some of the defects raised  
6 in the original motion remain in the new pleading, the court simply may consider the motion as  
7 being addressed to the amended pleading.”).

8           8.       *Whereas* Plaintiff and the Non-Government Defendants agree that there are no  
9 differences between Plaintiff's FAC and SAC as they relate to the Non-Government Defendants.

10           9.       *Whereas* Plaintiff and the Non-Government Defendants agree it is permissible and  
11 appropriate for the Court to treat Non-Government Defendants' motions to dismiss as if they  
12 were filed in response to Plaintiff's SAC.

13 **II.     [Proposed] Order Treating Non-Government Defendants' Rule 12(b)(6) Motions to**  
14 **Dismiss as Applicable to Plaintiff's Second Amended Complaint**

15           1.       The Court will treat Non-Government Defendants' Rule 12(b)(6) motions to  
16 dismiss (Dkt. Nos. 27 and 45) as if filed in response to Plaintiff's SAC.

17           2.       The schedule for subsequent briefing, including Plaintiff's opposition to Non-  
18 Government Defendant's motions to dismiss and Non-Government Defendants' replies, will be  
19 determined pursuant to the Stipulation to Stay Actions and File Amended Complaint, filed on  
20 March 20, 2018, once the further stay has been lifted (*see* Dkt. No. 73, at 5).

21           3.       Alternatively, if the Court declines to enter the Stipulation to Stay Actions and  
22 File Amended Complaint, the briefing schedule will be governed by the October 16, 2017  
23 Stipulation and Order to Stay Actions setting forth a briefing schedule. (Dkt. No. 55 at 4).  
24 Pursuant to that Stipulation and Order, the following dates apply:

25                   a.       Plaintiff's opposition to the Non-Government Defendants' pending Rule  
26                               12 motions is due April 30, 2018.

27                   b.       Non-Government Defendants' replies to Plaintiff's opposition is due May  
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14, 2018.

c. Non-Government Defendants’ pending Rule 12 motions will be heard on June 1, 2018, pursuant to the Court’s February 13, 2018 Minute Order (Dkt. No. 68).

Pursuant to Local Rule 131(e), all undersigned counsel have authorized BASF Corporation’s counsel, Amber M. Trincado, to sign and submit this Stipulation on their behalf.

Dated: April 3, 2018

SHER EDLING, LLP

By: /s/Timothy R. Sloane  
(as authorized on 4/3/18)  
Timothy R. Sloane

Attorneys for Plaintiff  
SACRAMENTO SUBURBAN WATER DISTRICT

Dated: April 3, 2018

KING & SPALDING LLP

By: /s/Amber M. Trincado  
Amber M. Trincado

Attorneys for Defendant  
BASF CORPORATION

Dated: April 3, 2018

BARG COFFIN LEWIS & TRAPP, LLP

By: /s/John F. Barg  
(as authorized on 3/29/18)  
John F. Barg

Attorneys for Defendant  
OCCIDENTAL CHEMICAL CORPORATION

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Dated: April 3, 2018

MORGAN, LEWIS & BOCKIUS, LLP

By: /s/Elle F. Chapman  
(as authorized on 4/2/18)  
Elle F. Chapman

Attorneys for Defendant  
ELEMENTIS CHROMIUM INCORPORATED

Dated: April 3, 2018

ARNOLD PORTER KAYE SCHOLER LLP

By: /s/Stephanie B. Weirick  
(as authorized on 3/30/18)  
Stephanie B. Weirick

Attorneys for Defendant  
HONEYWELL INTERNATIONAL INC.

Dated: April 3, 2018

BEVERIDGE & DIAMOND, P.C.

By: /s/Gary J. Smith  
(as authorized on 3/29/18)  
Gary J. Smith

Attorneys for Defendant  
PPG INDUSTRIES, INC., sued as PPG  
INCORPORATED

Dated: April 3, 2018

GLYNN & FINLEY, LLP

By: /s/Andrew T. Mortl  
(as authorized on 3/29/18)  
Andrew T. Mortl

Attorneys for Defendant  
E.I. DU PONT DE NEMOURS AND COMPANY

1 Dated: April 3, 2018

ARCHER & GREINER P.C.

2

3

By: /s/Carlos M. Bollar

(as authorized on 4/3/18)

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Carlos M. Bollar

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Attorneys for Defendant

LUXFER HOLDINGS PLC

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8 Dated: April 3, 2018

ALEXANDER & ASSOCIATES PC

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By: /s/Alisyn J. Palla

(as authorized on 4/3/18)

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Alisyn J. Palla

12

Attorneys for Defendant

UNIVAR USA INC. and UNIVAR INC.

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14

15 Dated: April 3, 2018

STEPTOE & JOHNSON, LLP

16

17

By: /s/Jay E. Smith

(as authorized on 4/2/18)

18

Jay E. Smith

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Attorneys for Defendant

SIGMA-ALDRICH CORPORATION

20

21

22 Dated: April 3, 2018

MITCHELL CHADWICK, LLP

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By: /s/Clifton McFarland

(as authorized on 3/30/18)

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Clifton McFarland

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Attorneys for Defendant

THE DOW CHEMICAL COMPANY

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The court adopts the parties' stipulation and orders as follows:

- 1. The Court will treat Non-Government Defendants' Rule 12(b)(6) motions to dismiss (Dkt. Nos. 27 and 45) as if filed in response to Plaintiff's SAC.
- 2. The schedule for subsequent briefing, including Plaintiff's opposition to Non-Government Defendant's motions to dismiss and Non-Government Defendants' replies, will be determined pursuant to the Stipulation to Stay Actions and File Amended Complaint, filed on March 20, 2018, once the further stay has been lifted (see Dkt. No. 73, at 5).

IT IS SO ORDERED.

DATED: April 10, 2018

  
UNITED STATES DISTRICT JUDGE