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 16 COUNTY OF PLACER

17 **UNITED STATES DISTRICT COURT**  
 18 **EASTERN DISTRICT OF CALIFORNIA**

19 CITY OF LINCOLN,  
 20 Plaintiff,  
 21 v.  
 22 COUNTY OF PLACER; and DOES 1  
 23 through 100, inclusive,  
 24 Defendants.  
 25 \_\_\_\_\_  
 26 AND RELATED COUNTER CLAIMS.

Case No.: 2:18-CV-00087-KJM-AC

**JOINT STIPULATION AND  
 ORDER REGARDING  
 MODIFICATION OF THE SIXTH  
 AMENDED PRETRIAL SCHEDULING  
 ORDER**

28 00055367.1

1 The parties to this action, Plaintiff/Counter-Defendant City of Lincoln (“City”) and  
2 Defendant/Counterclaimant County of Placer (“County”) (hereinafter collectively, “Parties”), have met  
3 and conferred and hereby jointly and respectfully request that the Court modify the Sixth Amended  
4 Pretrial Scheduling Order (Dkt. 45) to allow an extension of the expert witness discovery deadline of  
5 October 14, 2022, by fourteen (14) days to **October 28, 2022**. The parties also jointly request an  
6 extension of the December 9, 2022 dispositive motion hearing deadline, by seventy (70) days to  
7 **February 17, 2023**. The parties also agree to a stay on filing any dispositive motions until after **January**  
8 **1, 2023**.

9 The Parties jointly submit the following summary of previous modifications to the deadlines in  
10 the scheduling orders and a statement of good cause in support of their instant request.

11 **PREVIOUS MODIFICATIONS TO THE PRETRIAL SCHEDULING ORDER**

12 **A. First Amended Pretrial Scheduling Order**

13 In November 2019, the Parties requested and received an Order (Dkt. 17, 18) extending the  
14 deadline for fact discovery in this matter from December 16, 2019, to March 9, 2020. The Parties  
15 provided the following reasons for that initial 12-week extension of the fact discovery deadline:

- 16 1. To allow the City to complete its review and voluntary production to the County of select  
17 documents from the voluminous County Archive documents;
- 18 2. To allow the City to complete its sixth voluntary production (consisting of approximately  
19 1,600 pages that the City copied from County archives, and approximately 3,500 pages  
20 of additional supplemental information that City’s counsel obtained from publicly  
21 available locations);
- 22 3. To allow the Parties to determine whether there are additional percipient witnesses, locate  
23 those witnesses and interview them, with the goal of taking depositions;
- 24 4. To allow the Parties to conduct any further written discovery arising from their review of  
25 the County Archive documents;

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1 5. To allow the Parties to have a full opportunity to meet and confer, narrow the scope of  
2 their Rule 30(b)(6) deposition notices, and hopefully ease the burden on their respective  
3 public entity employees/representatives; and

4 6. To possibly aid in the mediation and settlement process, by further eliminating factual  
5 disputes related to the Parties' alleged contribution to conditions at the Landfill and their  
6 respective liability, if any, therefore.

7 **B. Second Amended Pretrial Scheduling Order**

8 In February 2020, the Parties requested and received an Order (Dkt. 20, 21) continuing the  
9 deadlines for fact discovery, designation of expert witnesses, expert discovery and dispositive motions  
10 in this matter by six (6) months. The Parties provided the following reasons for a six-month continuance  
11 of deadlines:

12 1. To allow the Parties to continue their meet and confer efforts and complete fact and expert  
13 discovery in a timely manner;

14 2. To allow the Parties to continue their search for potential witnesses with relevant  
15 knowledge of events that took place over 60 years ago;

16 3. To allow the County's recently retained outside environmental counsel adequate time to  
17 review the voluminous production of documents;

18 4. To allow the Parties adequate time to prepare their Federal Rule of Civil Procedure  
19 30(b)(6) witnesses for their respective depositions; and

20 5. To allow the Parties to explore settlement discussions after completing the discovery  
21 process.

22 **C. Third Amended Pretrial Scheduling Order**

23 In August 2020, the Parties requested and received an Order (Dkt. 22, 23) continuing the  
24 deadlines for fact discovery, designation of expert witnesses, expert discovery and dispositive motions  
25 in this matter by eight (8) months. The Parties provided the following reasons for an eight-month  
26 continuance of deadlines:

27 1. Challenges that were unforeseen in February 2020, resulting from the COVID-19  
28 pandemic that impacted this country beginning in March, including difficulties in

1 scheduling and preparing government employees for deposition, as they were required  
2 to work remotely, and difficulties in taking such depositions remotely, in light of the  
3 document-intensive nature of said depositions;

4 2. To allow the Parties to continue their meet and confer efforts to finalize various discovery  
5 and evidentiary authentication agreements, with the goal of streamlining evidentiary  
6 presentations at trial;

7 3. To allow the Parties to explore settlement discussions after completing discovery.

8 **D. Fourth Amended Pretrial Scheduling Order**

9 In March 2021, the Parties requested and received an Order (Dkt. 27, 28) continuing the  
10 deadlines for fact discovery, designation of expert witnesses, expert discovery and dispositive motions  
11 in this matter by six (6) months. The Parties provided the following reasons for a six-month continuance  
12 of deadlines:

13 1. To allow the Parties to continue their meet and confer efforts to finalize various  
14 discovery and evidentiary authentication agreements, with the goal of streamlining  
15 evidentiary presentations at trial;

16 2. Challenges resulting from the continued COVID-19 pandemic that impacted this  
17 country beginning in March 2020, including difficulties in scheduling and preparing  
18 government employees for deposition, as they were required to work remotely, and  
19 difficulties in taking such depositions remotely, in light of the document-intensive nature  
20 of said depositions;

21 3. To allow the Parties to explore settlement discussions after completing discovery.

22 **E. Fifth Amended Pretrial Scheduling Order**

23 In August 2021, the Parties requested and received an Order (Dkt. 31, 32) continuing the  
24 deadlines for fact discovery, designation of expert witnesses, expert discovery and dispositive motions  
25 in this matter by ninety (90) days. The Parties provided the following reasons for a ninety-day  
26 continuance of deadlines:

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- 1           1.     To allow the Parties to diligently identify and review the voluminous supplemental
- 2                     production of relevant documents; identify and prepare fact witnesses for deposition; and
- 3                     finalize discovery and evidentiary agreements.
- 4           2.     To allow the Parties to meet and confer regarding the scope and timing of their respective
- 5                     Fed. R. Civ. Proc. Rule 30(b)(6) depositions.
- 6           3.     To allow the Parties to explore settlement discussions after completing discovery.

7     **F.     Sixth Amended Pretrial Scheduling Order**

8           In March 2022, the Parties requested and received an Order (Dkt. 45) continuing the deadlines

9     for designation of expert witnesses by ninety (90) days to June 7, 2022, and an extension of the deadline

10    to exchange rebuttal lists of expert witnesses was extended by seventy-seven (77) days to August 22,

11    2022. The deadline to conclude expert discovery was extended by thirty-eight (38) days to October 14,

12    2022. Our dispositive motion deadline remained December 9, 2022. The Parties provided the following

13    reasons for the requested continuance:

- 14           1.     The County's lead expert was at the hospital with his immediate family member, who
- 15                     had been involved in a serious accident. The County was informed that this situation
- 16                     would impact his availability for all of the expert's matters for an indeterminate amount
- 17                     of time.

18           Now, the Parties seek the Court's approval to extend the completion of expert discovery and

19    dispositive motion hearing deadlines, based upon the unavailability of the County's lead expert and one

20    of the City's experts for deposition before the current expert discovery deadline expires. An extension

21    of the deadlines for expert discovery and dispositive motion related deadlines is required and

22    respectfully requested, for the reasons set forth below.

23                     **STATEMENT OF GOOD CAUSE FOR MODIFYING THE EXISTING EXPERT**

24                     **DISCOVERY AND DISPOSITIVE MOTION DEADLINES**

25           The Parties jointly submit the following statement of good cause in support of their stipulation

26    and request a fourteen (14) day extension for completion of expert discovery; a seventy (70) day

27    extension for the dispositive motion hearing deadline; and a stay until after January 1, 2023, for the

28    parties to file any dispositive motions.

1 A district court has “broad discretion in supervising the pretrial phase of litigation.” *C.F. v.*  
2 *Capistrano Unified Sch. Dist.*, 654 F.3d 975, 984 (9th Cir. 2011). A scheduling order may be modified  
3 “for good cause and with the judge’s consent.” Fed. R. Civ. Proc. 16(b)(4); *Johnson v. Mammoth*  
4 *Recreations*, 975 F.2d 604, 608 (9th Cir. 1992); *see also*, Dkt. 16, 6:22-26. The key factors considered  
5 in determining good cause are whether the party moving for modification was diligent in trying to  
6 complete discovery in a timely manner, and the party’s reasons for seeking modification. *Johnson*,  
7 *supra*, 975 F.2d at 609; *C.F.*, *supra*, 654 F.3d at 984; *Tapias v. Mallet & Co.*, 2017 U.S. Dist. LEXIS  
8 144406, at \*1-2 (N.D. Cal. Sep. 6, 2017). The district court may modify the pretrial schedule “if it  
9 cannot reasonably be met despite the diligence of the party seeking the extension.” *Johnson, supra*, 975  
10 F.2d at 609; *Tapia, supra*, 2017 U.S. Dist. LEXIS 144406, at \*1.

11 Generally, courts use a three-step inquiry in assessing diligence for determining good cause  
12 under Rule 16:

13 [T]o demonstrate diligence under Rule 16’s “good cause” standard, the movant may be  
14 required to show the following: (1) that she was diligent in assisting the Court in creating  
15 a workable Rule 16 order; (2) that her noncompliance with a Rule 16 deadline occurred  
16 or will occur, notwithstanding her diligent efforts to comply, because of the development  
of matters which could not have been reasonably foreseen or anticipated at the time of  
the Rule 16 scheduling conference; and (3) that she was diligent in seeking amendment  
of the Rule 16 order, once it became apparent that she could not comply with the order.

17 *Grant v. United States*, 2011 U.S. Dist. LEXIS 131662, at \*14 (E.D. Cal. Nov. 14, 2011) (citing *Jackson*  
18 *v. Laureate, Inc.*, 186 F.R.D. 605, 608 (E.D. Cal. 1999)).

19 **A. The Parties’ Efforts to Prepare a Workable Rule 16 Order**

20 The Parties were diligent in assisting the Court in creating a Rule 16 Order. As mentioned in the  
21 prior Stipulation and Orders, the Parties met and conferred, and filed their “Joint Report of Parties’  
22 Planning Meeting” on May 16, 2018 (Dkt. 12). From the outset, the Parties recognized that this action  
23 would be complex, both factually and legally. The City alleges that waste disposal activities occurred  
24 over sixty years ago, from the late 1940s to 1976. The City’s asserted contaminant response activities  
25 have spanned several decades since the closure of the Landfill, and the City alleges those are ongoing  
26 today. The Parties brought claims against one another under, *inter alia*, the  
27 Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), legislation  
28 which has been aptly called an inherently “complex statute with a maze-like structure and baffling

1 language.” *ASARCO, LLC v. Celanese Chemical Co.*, 792 F.3d 1203, 1208 (9th Cir. 2015) (citing  
2 *California ex. rel. Cal. Dep’t. of Toxic Substances Control v. Neville Chem. Co.*, 358 F.3d 661, 663 (9th  
3 Cir. 2004)) (internal quotations omitted). Recognizing that this case involved a complex environmental  
4 statute, six decades of documentation and potentially numerous witnesses, the Parties requested  
5 approximately a year-and-a-half to complete fact discovery. *See* Dkt. 16, p. 14.

6 The Pretrial Scheduling Order was reasonably calculated to address the complexities of this case,  
7 and it was created with the active participation of the Parties. However, as discussed below, the  
8 unavailability of the City and County’s expert witnesses is the reason for this request.

9 **B. Unavailability of City’s and County’s Expert Witnesses for Depositions before Current**  
10 **Expert Witness Discovery Deadline Expires**

11 The parties believe it is reasonable and necessary to extend the expert discovery deadline to  
12 accommodate their respective expert witnesses’ unavailability. The City’s expert is not available for  
13 deposition due to travel plans during the months of September and October and is not expected to be  
14 available for deposition until mid-October, after the current expert discovery cutoff. The County’s expert  
15 is unavailable for deposition prior to the current expert discovery deadline due to the scheduling of two  
16 trials. Both the City’s expert and the County’s expert referenced above, are available for deposition after  
17 the current expert discovery cutoff and the parties are conferring regarding mutually agreeable  
18 deposition dates for the respective experts’ depositions that will allow the parties to complete all expert  
19 depositions by October 28, 2022, should the Court grant the parties’ extension request.

20 Based on the parties’ respective experts’ scheduling conflicts and the impact on the expert  
21 discovery and dispositive motion hearing deadlines, the parties have agreed to seek extensions of the  
22 expert discovery and dispositive motion deadlines. The parties have also agreed to a stay on filing any  
23 dispositive motions until after January 1, 2023.

24 **PROPOSED MODIFICATIONS TO THE SIXTH AMENDED PRETRIAL SCHEDULING**  
25 **ORDER**

26 The Parties propose the following sections of the Amended Pretrial Scheduling Order (Dkt. 18)  
27 as amended by the Sixth Amended Pretrial Scheduling Order (Dkt. 45) be amended as follows:

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1 Section V. DISCLOSURE OF EXPERT WITNESSES

2 All expert discovery shall be completed by **October 28, 2022**.

3 Section VI. MOTION HEARING SCHEDULE

4 All dispositive motions, except motions for continuances, temporary restraining orders or other  
5 emergency applications, shall be heard no later than February 17, 2023, as ordered in the Sixth  
6 Amended Pretrial Scheduling Order (Dkt. 45). Dispositive motions shall not be filed by the parties until  
7 after **January 1, 2023**.

8 Dated: September 15, 2022

HARTMAN KING PC

9  
10 By: /s/ Jennifer Hartman King

JENNIFER HARTMAN KING

11 ALANNA LUNGREN

J. R. PARKER

12 ANDREYA WOO NAZAL

Attorneys for Defendant and

13 Counterclaimant COUNTY OF PLACER

14 Dated: September 15, 2022

BROWN & WINTERS

15 By: /s/ Jeffrey T. Orrell (as authorized on 9/15/22)

16 WILLIAM D. BROWN

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Attorneys for Plaintiff and

18 Counter-Defendant CITY OF LINCOLN



1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF CALIFORNIA

3  
4 CITY OF LINCOLN,

5 Plaintiff,

6 v.

7 COUNTY OF PLACER; and DOES 1  
8 through 100, inclusive,

9 Defendants.

Case No.: 2:18-CV-00087-KJM-AC

**SIXTH AMENDED PRETRIAL  
SCHEDULING ORDER**

10  
11 Upon consideration of Plaintiff/Counter-Defendant City of Lincoln's ("City") and  
12 Defendant/Counterclaimant County of Placer's ("County") Joint Stipulation Regarding Modification of  
13 the Sixth Amended Pretrial Scheduling Order, and finding good cause therefor, the Court hereby amends  
14 the Sixth Amended Pretrial Scheduling Order (Dkt. 45) as follows:

15 Section V. DISCLOSURE OF EXPERT WITNESSES

16 All expert discovery shall be completed by **October 28, 2022**.

17 Section VI. MOTION HEARING SCHEDULE

18 All dispositive motions, except motions for continuances, temporary restraining orders or other  
19 emergency applications, shall be heard no later than February 17, 2023, as ordered in the Seventh  
20 Amended Pretrial Scheduling Order. Dispositive motions shall not be filed by the parties until after  
21 **January 1, 2023**.

22 **IT IS SO ORDERED.**

23 DATED: September 28, 2022.

24  
25   
26 \_\_\_\_\_  
27 CHIEF UNITED STATES DISTRICT JUDGE  
28