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19 Attorneys for Plaintiff/Counter-Defendant CITY OF LINCOLN

20 **UNITED STATES DISTRICT COURT**
 21 **EASTERN DISTRICT OF CALIFORNIA**

22 CITY OF LINCOLN,
 23
 24 Plaintiff,
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 26 v.
 27 COUNTY OF PLACER; and DOES 1
 28 through 100, inclusive,
 29
 30 Defendants.

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

**JOINT STIPULATION AND
 ORDER REGARDING
 MODIFICATION OF THE SEVENTH
 AMENDED PRETRIAL SCHEDULING
 ORDER AND EXTENSION OF TIME TO
 FILE THE CITY OF LINCOLN’S
 OPPOSITIONS TO THE COUNTY OF
 PLACER’S MOTIONS FOR SUMMARY
 JUDGMENT AND THE COUNTY OF
 PLACER’S REPLIES**

Current Summary Judgment Hearing:
 March 10, 2023
 Time: 10:00 a.m.
 Judge: Hon. Kimberly J. Mueller
 Courtroom: 3

AND RELATED COUNTER CLAIMS.

00058155.1

JOINT STIPULATION AND ORDER REGARDING MODIFICATION OF THE SEVENTH AMENDED PRETRIAL SCHEDULING ORDER AND EXTENSION OF TIME TO FILE THE CITY OF LINCOLN’S OPPOSITIONS TO THE COUNTY OF PLACER’S MOTIONS FOR SUMMARY JUDGMENT AND THE COUNTY OF PLACER’S REPLIES

1 The parties to this action, Plaintiff/Counter-Defendant City of Lincoln (“City”) and
2 Defendant/Counter-Claimant County of Placer (“County”) (hereinafter collectively, “Parties”), have met
3 and conferred and hereby jointly and respectfully request that the Court modify the Seventh Amended
4 Pretrial Scheduling Order (Dkt. 64) to allow an extension of the dispositive motion hearing deadline
5 solely with respect to the County’s pending Motions for Summary Judgment (Dkt. 78, 79) by forty-two
6 (42) days to **March 31, 2023**.¹

7 In addition, the Parties respectfully request that the Court grant the following extensions of time
8 for filing the oppositions and the replies to the County’s Motions for Summary Judgment:

- 9 1. The City may file its Oppositions to the County’s Motions for Summary Judgment on or before
10 **February 10, 2023**;
- 11 2. The County may file its Replies to the City’s Oppositions to the County’s Motions for Summary
12 Judgment on or before **March 2, 2023**.

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

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

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

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

- 20 1. To allow the City to complete its review and voluntary production to the County of select
21 documents from the voluminous County Archive documents;
- 22 2. To allow the City to complete its sixth voluntary production (consisting of approximately
23 1,600 pages that the City copied from County archives, and approximately 3,500 pages
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25 ¹ On January 17, 2023, on its own motion, the Court reset the hearing on the County’s Motions
26 for Summary Judgment from February 17, 2023, to March 10, 2023. (Dkt. 80.) This continued hearing
27 date is within the proposed extension of time for these Motions to be heard; however, if the Court wishes
28 to reset the hearing to a date between March 10, 2023, and March 31, 2023, the Parties would have no
objections.

1 of additional supplemental information that City's counsel obtained from publicly
2 available locations);

- 3 3. To allow the Parties to determine whether there are additional percipient witnesses, locate
4 those witnesses and interview them, with the goal of taking depositions;
- 5 4. To allow the Parties to conduct any further written discovery arising from their review
6 of the County Archive documents;
- 7 5. To allow the Parties to have a full opportunity to meet and confer, narrow the scope of
8 their Rule 30(b)(6) deposition notices, and hopefully ease the burden on their respective
9 public entity employees/representatives; and
- 10 6. To possibly aid in the mediation and settlement process, by further eliminating factual
11 disputes related to the Parties' alleged contribution to conditions at the Landfill and their
12 respective liability, if any, therefore.

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

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

- 18 1. To allow the Parties to continue their meet and confer efforts and complete fact and expert
19 discovery in a timely manner;
- 20 2. To allow the Parties to continue their search for potential witnesses with relevant
21 knowledge of events that took place over 60 years ago;
- 22 3. To allow the County's recently retained outside environmental counsel adequate time to
23 review the voluminous production of documents;
- 24 4. To allow the Parties adequate time to prepare their Federal Rule of Civil Procedure
25 30(b)(6) witnesses for their respective depositions; and
- 26 5. To allow the Parties to explore settlement discussions after completing the discovery
27 process.

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

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

- 6 1. Challenges that were unforeseen in February 2020, resulting from the COVID-19
7 pandemic that impacted this country beginning in March, including difficulties in
8 scheduling and preparing government employees for deposition, as they were required
9 to work remotely, and difficulties in taking such depositions remotely, in light of the
10 document-intensive nature of said depositions;
- 11 2. To allow the Parties to continue their meet and confer efforts to finalize various discovery
12 and evidentiary authentication agreements, with the goal of streamlining evidentiary
13 presentations at trial;
- 14 3. To allow the Parties to explore settlement discussions after completing discovery.

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

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

- 20 1. To allow the Parties to continue their meet and confer efforts to finalize various
21 discovery and evidentiary authentication agreements, with the goal of streamlining
22 evidentiary presentations at trial;
- 23 2. Challenges resulting from the continued COVID-19 pandemic that impacted this
24 country beginning in March 2020, including difficulties in scheduling and preparing
25 government employees for deposition, as they were required to work remotely, and
26 difficulties in taking such depositions remotely, in light of the document-intensive nature
27 of said depositions;

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

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

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

7 1. To allow the Parties to diligently identify and review the voluminous supplemental
8 production of relevant documents; identify and prepare fact witnesses for deposition; and
9 finalize discovery and evidentiary agreements.

10 2. To allow the Parties to meet and confer regarding the scope and timing of their respective
11 Fed. R. Civ. Proc. Rule 30(b)(6) depositions.

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

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

14 In March 2022, the Parties requested and received an Order (Dkt. 45) continuing the deadlines
15 for designation of expert witnesses by ninety (90) days to June 7, 2022, and an extension of the deadline
16 to exchange rebuttal lists of expert witnesses by seventy-seven (77) days to August 22, 2022. The
17 deadline to conclude expert discovery was extended by thirty-eight (38) days to October 14, 2022. Our
18 dispositive motion deadline remained December 9, 2022. The Parties provided the following reasons
19 for the requested continuance:

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

23 **G. Seventh Amended Pretrial Scheduling Order**

24 In September 2022, the Parties requested and received an Order (Dkt. 64) continuing the
25 deadlines for expert discovery by fourteen (14) days to October 28, 2022, and an extension of the
26 dispositive motion hearing deadline by seventy (70) days to February 17, 2023 – as well as a stay on
27 filing any dispositive motions until after January 1, 2023. The Parties provided the following reasons
28 for the requested continuance:

1 1. One of the City’s experts was not available for deposition due to prescheduled overseas
2 travel plans during the months of September and October and was not expected to be available
3 for deposition until mid-October, after the current expert discovery cutoff.

4 2. The County’s expert was unavailable for deposition prior to the expert discovery deadline
5 due to the scheduling of two trials.

6 3. Both experts were available for deposition shortly after the October 14, 2022 expert
7 discovery cutoff.

8 Now, the Parties seek the Court’s approval to extend the dispositive motion hearing deadline
9 solely with respect to the County’s pending Motions for Summary Judgment (Dkt. 78, 79) to March 31,
10 2023, based on the agreement between the Parties to seek additional time for the City to file its
11 Oppositions and the County to file its Replies to the County’s two Motions for Summary Judgment,
12 subject to Court approval. The Parties agree that good cause exists for this extension due to the
13 complexity of this environmental litigation and the large volume of records involved in the case,
14 spanning seven decades or more. This agreement upon filing dates would extend the deadline for the
15 County’s Replies to a date after the current dispositive motion hearing deadline of February 17, 2023.
16 An extension of the dispositive motion hearing deadline solely with respect to the County’s pending
17 Motions for Summary Judgment and time to oppose and to reply to those Motions for Summary
18 Judgment is respectfully requested, for the reasons set forth below.

19 **STATEMENT OF GOOD CAUSE FOR MODIFYING THE DISPOSITIVE MOTION**
20 **HEARING DEADLINE SOLELY WITH RESPECT TO THE COUNTY’S PENDING**
21 **MOTIONS FOR SUMMARY JUDGMENT AND THE BRIEFING SCHEDULE RELATED**
22 **THERE TO**

23 The Parties jointly submit the following statement of good cause in support of their stipulation
24 and request a forty-two (42) day extension of the dispositive motion hearing deadline solely with respect
25 to the County’s pending Motions for Summary Judgment (Dkt. 78, 79) and an extension of the time
26 allotted under Local Rule 230 to file the Oppositions [fourteen (14) day extension] and Replies [ten (10)
27 day extension] to the County’s two Motions for Summary Judgment.

28 A district court has “broad discretion in supervising the pretrial phase of litigation.” *C.F. v.*
Capistrano Unified Sch. Dist., 654 F.3d 975, 984 (9th Cir. 2011). A scheduling order may be modified

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

9 A three-step inquiry may be applied in assessing diligence for determining good cause under
10 Rule 16:

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

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

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

22 The Parties were diligent in assisting the Court in creating a Rule 16 Order. As mentioned in
23 the prior Stipulation and Orders, the Parties met and conferred, and filed their “Joint Report of Parties’
24 Planning Meeting” on May 16, 2018 (Dkt. 12). From the outset, the Parties recognized that this action
25 would be complex, both factually and legally. The City alleges that waste disposal activities occurred
26 over sixty years ago, from the late 1940s to 1976. The City’s asserted contaminant response activities
27 have spanned several decades since the closure of the Landfill, and the City alleges those are ongoing
28 today.

The Parties brought claims against one another under, *inter alia*, the Comprehensive Environmental
Response, Compensation, and Liability Act (“CERCLA”), legislation which has been aptly called an
inherently “complex statute with a maze-like structure and baffling language.” *ASARCO, LLC v.*

1 *Celanese Chemical Co.*, 792 F.3d 1203, 1208 (9th Cir. 2015) (citing *California ex. rel. Cal. Dep't. of*
2 *Toxic Substances Control v. Neville Chem. Co.*, 358 F.3d 661, 663 (9th Cir. 2004)) (internal quotations
3 omitted). Recognizing that this case involved a complex environmental statute, six decades of
4 documentation and potentially numerous witnesses, the Parties requested approximately a year-and-a-
5 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, both the
8 complexity of this environmental litigation, in addition to the large volume of records involved in the
9 case, justify this request.

10 **B. The County's Two Motions for Summary Judgment**

11 The Parties agree that this is a complex environmental case covering approximately two-and-a-
12 half decades of historical operations, nearly five decades of post-closure operations and regulatory files,
13 and hundreds of thousands of pages of documents produced in discovery. The County filed its two
14 Motions for Summary Judgment – one addressing the City's First Amended Complaint, and one
15 addressing the County's CERCLA section 113 Counterclaim on January 13, 2023. Eastern District of
16 California Local Rule 230(c) sets the deadline for filing an opposition to a motion at fourteen days.
17 Local Rule 230(d) sets the deadline for filing a reply to an opposition to a motion at ten days.

18 The Parties have met and conferred and agreed to request an extension of the City's deadline to
19 oppose the County's Motions for Summary Judgment and to request a proportionate extension of the
20 County's deadlines to reply to provide the Parties with sufficient time to fully present their legal
21 positions, facts and supporting evidence to the County's two Motions for Summary Judgment. As such,
22 the Parties agree and respectfully request that the City's Oppositions to the County's Motions for
23 Summary Judgment be extended by fourteen (14) days to February 10, 2023, and the County's Replies
24 to the City's Oppositions be extended by ten (10) days to March 2, 2023. Assuming the Court agrees to
25 these relatively brief extensions, the County's Replies would be due after the current dispositive motion
26 hearing deadline of February 17, 2023.

27 Based upon the foregoing, the Parties have agreed to jointly request an extension of the
28 dispositive motion deadline solely with respect to the County's pending Motions for Summary Judgment

1 (Dkt. 78, 79), as well as extensions of the deadline to file Oppositions and Replies in relation to the
2 County's Motions for Summary Judgment.

3 **PROPOSED MODIFICATIONS OF TIME TO OPPOSE AND REPLY IN RELATION TO THE**
4 **COUNTY'S MOTIONS FOR SUMMARY JUDGMENT**

5 The Parties hereby stipulate to and respectfully request that the Court approve, pursuant to Local Rule
6 144, the following:

- 7 1. The City may file its Oppositions to the County's Motions for Summary Judgment on or before
8 February 10, 2023;
- 9 2. The County may file its Replies to the City's Oppositions to the County's Motions for Summary
10 Judgment on or before March 2, 2023.

11 **PROPOSED MODIFICATIONS TO THE SEVENTH AMENDED PRETRIAL SCHEDULING**
12 **ORDER**

13 The Parties propose that, and respectfully request that the Court approve, the following sections
14 of the Amended Pretrial Scheduling Order (Dkt. 18) as amended by the Seventh Amended Pretrial
15 Scheduling Order (Dkt. 64) be amended as follows:

16 Section VI. MOTION HEARING SCHEDULE

17 All dispositive motions, except motions for continuances, temporary restraining orders or other
18 emergency applications, shall be heard no later than February 17, 2023; however, this deadline shall
19 not apply to the County's pending Motions for Summary Judgment (Dkt. 78, 79), which shall be heard
20 no later than March 31, 2023.

21 Dated: January 18, 2023

BROWN & WINTERS

22 By: /s/ Charles D. Grosenick

23 WILLIAM D. BROWN

24 JEFFREY T. ORRELL

JANET MENACHER

25 CHARLES D. GROSENICK

Attorneys for Plaintiff and Counter-Defendant

26 CITY OF LINCOLN

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1 Dated: January 18, 2023

HARTMAN KING PC

2
3 By: /s/Jennifer Hartman King (authorized on 1/18/23)

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6 ANDREYA WOO NAZAL

Attorneys for Defendant and

7 Counterclaimant COUNTY OF PLACER

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

CITY OF LINCOLN,

Plaintiff,

v.

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

Defendants.

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

**EIGHTH AMENDED PRETRIAL
SCHEDULING ORDER AND ORDER
TO EXTEND THE FILING TIME FOR
THE CITY OF LINCOLN’S
OPPOSITIONS TO COUNTY OF
PLACER’S MOTIONS FOR SUMMARY
JUDGMENT AND THE COUNTY OF
PLACER’S REPLIES**

Upon consideration of Plaintiff/Counter-Defendant City of Lincoln’s (“City”) and Defendant/Counterclaimant County of Placer’s (“County”) Stipulation And Order to Modify the Seventh Amended Pretrial Scheduling Order and to Extend Time for the filing of the City’s Oppositions and the County’s Replies in relation to the County’s Motions for Summary Judgment, and finding good cause therefor, the Court hereby amends the Seventh Amended Pretrial Scheduling Order (Dkt. 64) as follows:

Section VI. MOTION HEARING SCHEDULE

All dispositive motions, except motions for continuances, temporary restraining orders or other emergency applications, shall be heard no later than February 17, 2023; however, this deadline shall not apply to the County’s pending Motions for Summary Judgment (Dkt. 78, 79), which shall be heard no later than March 31, 2023. Moreover, the Court orders that:

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1. The City may file its Oppositions to the County’s Motions for Summary Judgment (Dkt. 78, 79) on or before February 10, 2023; and
2. The County may file its Replies to the City’s Oppositions to the County’s Motions for Summary Judgment (Dkt. 78, 79) on or before March 2, 2023.

IT IS SO ORDERED.

DATED: January 23, 2023.



CHIEF UNITED STATES DISTRICT JUDGE