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STIPULATION AND REQUEST TO EXTEND
STAY OF DISCOVERY AND TIME FOR FILING
ANSWERS – Case No.: 2:18-cv-01090-MCE-DB

1 ESTATE OF WILLIAM R. SUTTON, DECEASED,
sued herein pursuant to California Probate Code sections
2 550 through 555

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SUTTON, a California general partnership; DAWNA F. SUTTON, As Successor Trustee of The
8 Sutton Family Revocable Trust Dated October 6, 1997; DAWNA F. SUTTON, as Trustee of The
William R. Sutton Bypass Trust; DAWNA F. SUTTON, as Trustee of The Dawna F. Sutton
9 Survivor's Trust; and TROUBLEFREE, LLC, a California limited liability company

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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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14 EL MACERO PARTNERS, LLC, et al.,

Case No.: 2:18-cv-01090-MCE-DB

15 Plaintiffs,

**STIPULATION AND REQUEST FOR
LEAVE OF COURT TO EXTEND THE
STAY OF DISCOVERY AND TIME FOR
FILING ANSWERS, CROSS-CLAIMS
AND/OR COUNTERCLAIMS FOR AN
ADDITIONAL ONE YEAR PERIOD AND
FOR MODIFICATION OF THE COURT'S
FEBRUARY 27, 2023 ORDER; AND
ORDER**

16 vs.

17 ESTATE OF WILLIAM R. SUTTON, et al.,

18 Defendants.

19

20 The Parties hereto, by and through their attorneys of record, hereby stipulate to the
21 following facts in support of a joint request for leave of Court to extend for an additional one year
22 period the deadlines set forth in the Court's February 27, 2023 Order (filed February 28, 2023;
23 ECF No. 58) regarding discovery and time for filing answers, crossclaims and/or counterclaims,
24 and for modification of the Court's February 27, 2023 Order as follows:

25 **I. STATUS OF THE ACTION**

26 A. Plaintiffs EL MACERO PARTNERS, LLC, a California limited liability company,
27 and FAIR PLAZA II, LTD., a California limited partnership, filed their Complaint herein on or
28 about April 3, 2018. Thereafter, on or about August 21, 2018, Plaintiffs filed their First Amended

1 Complaint (“FAC”), adding Defendant B.C. TILE II, INC. DBA COTTONWOOD CLEANERS
2 AND EL MACERO CLEANERS (“B.C. Tile II, Inc.”);

3 B. The following Defendants have filed their Answers to Plaintiffs’ FAC:

- 4 1. DAWNA F. SUTTON; individually and as General Partner of CAL-WEST
5 SUTTON, a California general partnership; DAWNA F. SUTTON, as
6 Successor Trustee of The Sutton Family Revocable Trust Dated October 6,
7 1997; DAWNA F. SUTTON, as Trustee of The William R. Sutton Bypass
8 Trust; DAWNA F. SUTTON, as Trustee of The Dawna F. Sutton Survivor’s
9 Trust; CAL-WEST SUTTON, a California general partnership, and
10 TROUBLEFREE, LLC, a California limited liability company (the “Sutton-
11 Related Defendants”); and
12 2. BYONG HYON SON and MYONG HEE SON, individually and doing
13 business as EL MACERO CLEANERS and Defendant EL MACERO
14 CLEANERS, INC. a California corporation (the “El Macero, Inc.-Related
15 Defendants”);

16 C. Defendant AMERICAN GENERAL, the alleged successor-in-interest to
17 California-Western States Life Insurance Company, and TIG Group, on behalf of Defendant the
18 ESTATE OF WILLIAM R. SUTTON, Deceased, has yet to file a response to the FAC. In
19 accordance with the Court’s February 27, 2023 Order its response is currently due to be filed on or
20 before March 13, 2024;

21 D. The following Defendants have had defaults entered against them, as indicated:

- 22 1. The default of Defendant CHANG SIK CHOI was entered by the Clerk of the
23 Court as to the First Amended Complaint on February 28, 2020;
24 2. The default of Defendant B. C. Tile II, Inc. was entered by the Clerk of the
25 Court as to the First Amended Complaint on December 4, 2018;

26 E. Plaintiffs have been unable to locate a personal representative for Defendant
27 ESTATE OF SANG-EUI SIM, DECEASED or insurance carrier(s) for Mr. Sim, but Plaintiffs are
28 continuing in their efforts to do so; and

1 F. Formal discovery to date has been limited to Plaintiffs’ service of the Subpoenas
2 (for production of documents) on InterWest Insurance and Nationwide Insurance and the
3 deposition of Bill Williams, an individual formerly employed by the Sutton Defendants as a
4 handyman at the El Macero Shopping Center.

5 **II. SHOWING OF GOOD CAUSE**

6 A. In or about April 2017, Plaintiffs commenced an investigation of PCE
7 contamination at the El Macero Cleaners, which occupies Suites F and G at the El Macero
8 Shopping Center, a commercial shopping center owned by Plaintiffs and located at 417 Mace
9 Boulevard, City of Davis, California (the “Site”) and have incurred and will continue to incur
10 response costs related to such investigation and remediation of the contamination. As is set forth
11 below in greater detail, the investigation and remediation efforts by Plaintiffs’ environmental
12 consultants – Risk-Based Decisions, Inc. (“RBDI”) and, since the retirement of RBDI’s principal
13 in July 2023, Salix, Inc. (“Salix”) – have experienced delays. Based on conversations between
14 RBDI and the lead regulatory oversight agency, the Central Valley Regional Water Quality
15 Control Board (“Water Board”), RBDI and Plaintiffs submitted a request for regulatory site
16 closure (i.e., “no further action” status) on January 31, 2023. However, the Water Board required
17 additional closure verification sampling. After additional sampling, and based on further
18 conversations between RBDI and the Water Board, RBDI and Plaintiffs submitted a site closure
19 report on July 7, 2023. However, the Water Board again required additional sampling. The Water
20 Board approved a Salix workplan for that additional sampling on December 8, 2023, with the
21 report of findings to be submitted by March 4, 2024. This timeframe would allow the Water
22 Board to approve site closure in the Second or Third Quarter of 2024, assuming the sampling
23 confirms that no further sampling or remedial work is necessary.

24 B. Originally, RBDI projected that, as an interim remedial measure, a Soil Vapor
25 Extraction (“SVE”) system consisting of, among other things, three shallow-screened SVE wells
26 (SVE-1a, 2a and 3a) and three deep-screened SVE wells (SVE-1b, 2b and 3b), would be installed
27 and operational by approximately the summer of 2018 and would operate through the summer of
28 2020. However, due to an unforeseen delay in obtaining a construction permit from the Yolo

1 County Air District, the system was not activated until January 2019.

2 C. From and after the January 2019 start up, the SVE system has not been fully
3 operational.

4 1. During the First, Third and Fourth Quarters 2019, only shallow SVE wells
5 SVE-1a, SVE-2a, and SVE-3a were operational. The remaining wells, SVE-1b,
6 SVE-2b and SVE-3b were off due to the rising water table which covered their well
7 screens. In the Second Quarter 2019 the system was off because water table had
8 risen so much that the system would not operate without excessive water
9 production. The SVE system was restarted in August 2019 with SVE-1a, SVE-2a
10 and SVE-3a operating and continued with those three wells through the First
11 Quarter of 2020. The remaining wells, SVE-1b, SVE-2b, and SVE-3b were off due
12 to groundwater flooding their well screens.

13 2. SVE-1a was turned off at the end of the First Quarter of 2020 as it had only
14 48 µg/m³ PCE, which is below the current commercial environmental screening
15 level of 67 ug/m³, when tested in January 2020. With the decrease in water levels
16 during the summer of 2020, SVE-2b and SVE-3b were turned on in July. In
17 August 2020, all three deep SVE wells (SVE-1b through SVE-3b) were turned on,
18 along with SVE-3a. These remained on until late December 2020 when water
19 levels again rose, flooding well screens in the deep wells. SVE-2a and SVE-3a
20 operated from December 2020 until February 2021.

21 3. The water levels dropped by February 2021, due to a second dry winter in
22 succession. As a result, SVE-2b and SVE-3b were turned on, SVE-2a was turned
23 off, and the SVE-3a valve was opened slightly. This system status continued
24 through the Second Quarter of 2021. SVE-3a and SVE-3b were on for most of the
25 Third Quarter of 2021, with SVE-2b activated late in the quarter. During the
26 Fourth Quarter of 2021, SVE-3a was partly open and SVE-3b was fully open, and
27 the system was non-operational for eight days due to mechanical problems.

28 D. In 2020, in light of these challenges with the SVE system, and in an effort to

1 expedite completion of the cleanup, RBDI recommended adding additional vapor extraction wells
2 to the SVE system and injecting potassium permanganate into the existing SVE wells in order to
3 break down the PCE near those areas.

4 E. In 2021, following further analysis and discussions with the Water Board, RBDI
5 determined that it may be feasible to achieve regulatory site closure without undertaking
6 additional vapor extraction or injections. As such, RBDI proposed, and the Water Board
7 approved, indoor air sampling at the Site, to assess the current and potential future impact of
8 residual contamination on human health. That sampling, conducted in September 2021 and
9 December 2021, found that levels of contaminants were either non-detect or below the relevant
10 Human Health Screening Level for Indoor Air, as set by the California Department of Toxic
11 Substances Control.

12 F. In 2022, based on further discussions with the Water Board in December 2021,
13 RBDI implemented a plan to address all items identified by the Water Board as necessary to
14 support a request for regulatory site closure. That plan included:

- 15 1. Completion of an additional round of indoor air sampling, during First
16 Quarter 2022.
- 17 2. Completion of three rounds of SVE system sampling, during First through
18 Third Quarters 2022.
- 19 3. Completion of four rounds of groundwater sampling, during First through
20 Fourth Quarters 2022.
- 21 4. A “rebound” test starting in December 2022. This involves shutting down
22 the SVE system for four months (through March 2023) and then further
23 sampling indoor air in April 2023, to evaluate whether indoor air
24 contaminant levels are likely to increase if the SVE system were
25 permanently deactivated.
- 26 5. RBDI meeting with the Water Board in October 2022, to discuss the data
27 and the eligibility of the site for regulatory closure.

28 G. On January 31, 2023, and pending completion of the April 2023 post-rebound

1 indoor air monitoring, RBDI submitted a Site Closure Request to the Water Board. On March 7,
2 2023, the Water Board required additional groundwater sampling, as well as additional subslab
3 soil vapor and indoor air sampling after the SVE system was shut off for at least 90 days. On
4 March 20, 2023, RBDI and Plaintiffs submitted a Closure Verification Sampling Workplan. On
5 March 23, 2023, the Water Board provided comments by phone – including a request for
6 groundwater, soil vapor, and indoor verification sampling after a four-month shutdown of the SVE
7 system – and, on March 28, 2023, RBDI and Plaintiffs submitted a Revised Closure Verification
8 Sampling Workplan. That plan included:

- 9 1. Collection of grab groundwater samples from multiple depths at one
10 location near the back of the El Macero Cleaners suite, to confirm the very
11 low concentrations of PCE at that location.
- 12 2. Collection of six eight-hour time-weighted average samples of indoor air
13 from five locations, to confirm the very low to non-detect concentrations of
14 PCE at those locations.
- 15 3. Collection of two seven-day passive sorbent samples of soil vapor
16 immediately below the concrete slab and co-located with two of the indoor
17 air samples, as required by the Water Board for closure verification.

18 H. On July 7, 2023, RBDI and Plaintiffs submitted a Site Closure Report to the Water
19 Board. That Report concluded that PCE concentrations in groundwater, indoor air, and subslab
20 soil vapor were below the applicable regulatory limits, and that current use of the site poses no
21 risk to human health or the environment. On August 15, 2023, the Water Board required
22 additional soil vapor and indoor air sampling to confirm these conclusions. On November 12,
23 2023, after discussions between Salix and the Water Board, Salix and Plaintiffs submitted an
24 Indoor Air and Soil Gas Sampling Workplan that included collection of eight-hour time-weighted
25 average samples from five indoor and one outdoor locations. On December 8, 2023, the Water
26 Board approved that plan, with the report of findings to be submitted by March 4, 2024. This
27 timeframe would allow the Water Board to approve site closure in the Second or Third Quarter of
28 2024, assuming the sampling confirms that no further sampling or remedial work is necessary.

1 I. In view of the much more extended period of delay than the Parties had originally
2 anticipated, the result of which is the absence of meaningful information regarding the extent of
3 Plaintiffs' damages on which to rely for purposes of discussing settlement, much less complete
4 discovery, the Parties hereto have jointly agreed to propose an additional one-year extension of the
5 existing stay. Such an extension would allow for a reliable determination of total response costs at
6 issue, which would facilitate discussion of the possibility of resolution of this matter through
7 informal means and/or through the services of an independent, third-party mediator, in an effort to
8 preserve judicial resources and avoid incurring further and possibly unnecessary litigation costs.

9 **III. STIPULATION**

10 NOW, THEREFORE, it is hereby stipulated by and between the Parties hereto, by and
11 through their respective counsel, that, subject to the Court's approval:

12 1. There shall be a one-year extension of the existing deadlines set forth in the Court's
13 February 27, 2023 Order in this matter of all non-expert written discovery, including
14 interrogatories, requests for admission and, except as set forth herein below in Paragraph 2,
15 document requests; all Party depositions; all expert witness discovery, including expert witness
16 disclosure, exchange of reports and the taking of expert depositions;

17 2. During the above-described one-year extension period, the Parties shall have the
18 ability to subpoena third-party documents;

19 3. There shall be a one-year extension of the deadline for responding to the FAC,
20 including bringing cross-claims and/or counterclaims by all Parties, and any responses, cross-
21 claims, and/or counterclaims shall be served and filed within 14 days following the expiration of
22 the one-year extension period;

23 4. There shall be a one-year extension of the current date for completion of all non-
24 expert discovery, which date is currently calculated as October 28, 2024. This extension shall
25 have the effect of also extending all other dates in the Court's February 27, 2023 Order, including,
26 but not limited to, designation of expert witnesses, exchanging of written reports and supplemental
27 designations of expert witnesses, filing of dispositive motions, and filing of a Joint Notice of Trial
28

1 Readiness; and

2 5. All of the foregoing dates shall be calculated from and after the dates extended
3 pursuant to the Court's February 27, 2023 Order, as shown below:
4

TASK	EXTENSION	CURRENT DATE PER FEBRUARY 27, 2023 ORDER	NEW DATE¹
Written Discovery	One-year stay	2/27/2024	2/27/2025
Response to First Amended Complaint, Cross-claims/ Counterclaims	One-year stay + 14 days	3/13/2024	3/13/2025
Non-Expert Discovery Completion	One-year extension from current non-expert discovery completion date	10/28/2024	10/28/2025
Expert Disclosure + reports	60 days from extended Non-Expert Discovery Completion Date	12/27/2024	12/29/2025
Supplemental Expert Disclosure	30 days after designation of experts	1/27/2025	1/27/2026
Dispositive Motions (180 days after close of non-expert discovery)	One-year extension	4/23/2025	4/23/2026
Joint Notice of Trial Readiness – to be filed not later than 30 days after last ruling on a dispositive motion		TBD based on date of last ruling on a dispositive motion	TBD based on date of last ruling on a dispositive motion

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28 ¹ Where the new date as calculated falls on a weekend, the date set forth is the following Monday.

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IT IS SO STIPULATED.

Dated: February 1, 2024

FARELLA BRAUN + MARTEL LLP

By: /s/ Donald Sobelman
Donald Sobelman
Christopher Rendall-Jackson

Attorney for Plaintiffs EL MACERO PARTNERS, LLC, a California limited liability company, and FAIR PLAZA II, LTD., a California limited partnership

Dated: February 1, 2024

ABBOTT & KINDERMANN, INC.

By: /s/ Glen C. Hansen (as authorized on 1/29/24)
Diane G. Kindermann Henderson
Glen C. Hansen

Attorneys for Defendants BYONG HYON SON, MYONG HEE SON and EL MACERO CLEANERS, INC., a California corporation

Dated: February 1, 2024

DOLL AMIR & ELEY LLP

By: /s/ Jamie O. Kendall (as authorized on 1/31/24)
Gregory L. Doll
Jamie O. Kendall

Attorneys for Defendant AMERICAN GENERAL LIFE INSURANCE Company, a Texas corporation

1 Dated: February 1, 2024

HUGO PARKER, LLP

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By: /s/ Jimmy S. Ly (as authorized on 1/29/24)

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Edward R. Hugo, Esq.

Jimmy S. Ly, Esq.

5

Attorney for TIG Group, on behalf of Defendant
ESTATE OF WILLIAM R. SUTTON, DECEASED,
sued herein pursuant to California Probate Code
sections 550 through 555

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7

8 Dated: February 1, 2024

HEFNER STARK & MAROIS, LLP

9

10

By: /s/ Kenneth R. Stone (as authorized on 1/29/24)

Kenneth R. Stone

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Attorneys for DAWNA F. SUTTON, Individually and
as General Partner of CAL-WEST SUTTON, a
California general partnership; DAWNA F. SUTTON,
As Successor Trustee of The Sutton Family Revocable
Trust Dated October 6, 1997; DAWNA F. SUTTON, as
Trustee of The William R. Sutton Bypass Trust;
DAWNA F. SUTTON, as Trustee of The Dawna F.
Sutton Survivor's Trust; and TROUBLEFREE, LLC, a
California limited liability company

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ORDER

The Court, having received, read, and considered the stipulation of the Parties, and good cause appearing as required by Federal Rules of Civil Procedure, rule 16(b)(4), hereby adopts the stipulation of the Parties in its entirety as its order, as follows:

1. There shall be a one-year extension of the deadlines set forth in this Court’s February 27, 2023 Order in this matter of all non-expert written discovery, including interrogatories, requests for admission and, except as set forth hereinbelow in Paragraph 2, document requests; all Party depositions; all expert witness discovery, including expert witness disclosure, exchange of reports and the taking of expert depositions;

2. During the above-described one-year extension period, the Parties shall have the ability to subpoena third-party documents;

3. There shall be a one-year extension of the deadline for responding to the FAC, including bringing cross-claims and/or counterclaims by all Parties, and any responses, cross-claims, and/or counterclaims shall be served and filed within 14 days following the expiration of the one-year extension period;

4. There shall be a one-year extension of the current date for completion of all non-expert discovery, which date is currently calculated as October 28, 2024. This extension shall have the effect of also extending all other dates in the Court’s February 27, 2023 Order, including, but not limited to, designation of expert witnesses, exchanging of written reports and supplemental designations of expert witnesses, filing of dispositive motions, and filing of a Joint Notice of Trial Readiness; and

5. All of the foregoing dates shall be calculated from and after the dates previously extended pursuant to the Court’s February 27, 2023 Order, as shown below:

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TASK	EXTENSION	CURRENT DATE PER FEBRUARY 27, 2023 ORDER	NEW DATE ¹
Written Discovery	One-year stay	2/27/2024	2/27/2025
Response to First Amended Complaint, Cross-claims/ Counterclaims	One-year stay + 14 days	3/13/2024	3/13/2025
Non-Expert Discovery Completion	One-year extension from current non-expert discovery completion date	10/28/2024	10/28/2025
Expert Disclosure + reports	60 days from extended Non-Expert Discovery Completion Date	12/27/2024	12/29/2025
Supplemental Expert Disclosure	30 days after designation of experts	1/27/2025	1/27/2026
Dispositive Motions (180 days after close of non-expert discovery)	One-year extension	4/23/2025	4/23/2026
Joint Notice of Trial Readiness – to be filed not later than 30 days after last ruling on a dispositive motion		TBD based on date of last ruling on a dispositive motion	TBD based on date of last ruling on a dispositive motion

IT IS SO ORDERED.

Dated: February 6, 2024


 MORRISON C. ENGLAND, JR.
 SENIOR UNITED STATES DISTRICT JUDGE

¹ Where the new date as calculated falls on a weekend, the date set forth is the following Monday.