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2 try this case, met and conferred with counsel for Defendants the Perrys, the Parks and
3 Kartoian/Dublin Town & Country Associates for the preparation of this Statement as required by
4 Civ. L.R. 16-3. The original counsel for Cross-Defendant Chiu has passed away, his replacement
5 has retired, and no further replacement counsel has yet appeared in the case.

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7 The Plaintiffs make the following representations and stipulations:

8 **A. JURISDICTION, VENUE AND SERVICE.**

9 1. This action primarily arises under the federal Comprehensive Environmental
10 Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601, *et seq.* This Court
11 therefore has jurisdiction over the subject matter of this action. This Court has supplemental
12 jurisdiction of the state claims asserted in this action, which are based on the same set of operative
13 facts. Judicial economy, convenience, and fairness to the Parties result from this Court's jurisdiction
14 over the state claims. Venue and intradistrict assignment is proper in this Court, as the subject
15 property and the events occurred in this judicial district. All activities and conduct pertinent to this
16 action occurred and are occurring in Dublin, Alameda County, California. All Parties have been
17 served, respectively, with the Complaint, Counter-Claims and Cross-Claims, except for the Lee
18 Defendants, as set forth below, who have not been located.

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21 **B. STATEMENT OF FACTS AND EVENTS UNDERLYING THE ACTION.**

22 2. Plaintiffs Bruce A. Burrows and James A. Roessler are natural persons, and at all
23 times relevant herein, have been in the business of real estate brokerage and related investment
24 activities. Defendants Dwight W. Perry and Carlton L. Perry (the "Perry Defendants") are natural
25 persons and, from approximately Summer, 1985, until approximately August, 1994, operated a dry

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1 cleaning business and leased premises at 7272 San Ramon Road (the address was later renumbered
2 to 7242), which is part of the Lamps Plus Plaza, in Dublin, California (the leased premises are
3 hereinafter referred to as the "Property"). Defendants Kwang Suk Lee and Kui Ja Lee (the "Lee
4 Defendants") are natural persons and, from approximately August, 1994, until approximately
5 December, 1999, operated a dry cleaning business and leased premises at the Property; the Lees have
6 not been located despite extensive efforts to do so. Defendants and Cross-Complainants Nam Sun
7 Park and Seung Hee Park (the "Park Defendants") are natural persons and, from approximately
8 December, 1999, until the present, operated and continue to operate a dry cleaning business and
9 lease premises at the Property. Cross-Defendant the Chiu Family Trust, Gabriel Chiu, Trustee (the
10 "Chiu Family Trust"), acquired the Property in approximately March, 2005, and is the current
11 owner. Cross-Defendants Dublin Town & Country Associates and William Kartoizian, a general
12 partner in Dublin Town & Country Associates (the "Dublin/Kartoizian Cross-Defendants"),
13 previously owned the Property at all times relevant to the present action and up to approximately
14 March, 2005.

17 3. Plaintiffs allege that the Defendants used PCE as a dry-cleaning chemical during
18 their periods of operation at the Property, until approximately March, 2000, when the Parks changed
19 their dry-cleaning operations so that PCE was no longer used, and it has not been used since that
20 time.

22 4. The Alameda County Health Care Services Agency, Environmental Health Division
23 (the "County"), has been and currently continues to oversee investigation and remediation of PCE in
24 subsurface soils, soil vapor and groundwater at the property.

26 5. This action was brought in October, 2007, and assigned to Judge Patel. Following
27 an initial status conference, the Parties met on May 1, 2008, at a settlement conference with

1 Magistrate Judge Laporte. The Plaintiffs, the Perrys Defendants, the Parks Defendants and the Chiu
2 Family Trust reached agreement to share in costs of investigation and necessary remediation.
3 The Plaintiffs and all the Defendants and Cross-Defendants, except the Lees Defendants, also agreed
4 to seek a stay on further discovery beyond initial disclosures, etc., to allow the Parties to
5 cooperate as far as possible with the County, and the Court ordered a six month stay and scheduled a
6 further case management conference for early December, 2008. Since that time, at the joint
7 stipulation of all the Parties, the stay has been continued and the scheduled dates for case
8 management conferences have been re-scheduled by order of the Court, as the Parties and the
9 County have worked to investigate and toward final remediation of the problem. Workplans and
10 supplemental workplans for study of the problem and means of remediating the PCE contamination
11 have been submitted, reviewed by the County, and implemented by the consultant hired by the
12 Parties, sometimes in accordance with revisions required by the County. The original actions and
13 installations were completed as anticipated in 2010. Thereafter, the County requested and the
14 Parties submitted a further workplan, which, after some months of review by the County, was
15 approved. Additional monitoring wells and soil vapor sampling points were installed, and more
16 rounds of samples were taken. Reporting on the sampling was made, and the County reviewed that
17 reporting. Unfortunately, there was some delay in County review due to re-assignment of the agency
18 project manager, and increased workload. The County requested a proposed Corrective Action Plan
19 ("CAP"), and the proposed CAP was prepared by the consultant and timely submitted to the County
20 on September 22, 2011, by Mr. Roessler, who has led the Parties sharing in costs. By letter dated
21 October 7, 2011, the County approved the proposed CAP, approved soil vapor extraction ("SVE") as
22 the remedial alternative for PCE detected at the Site, approved resumption of Interim Remedial
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1 Action, and required implementation of public participation, including but not limited to a fact sheet
2 and solicitation and response to comments by the public, leading to final approval of the CAP and its
3 implementation. Technical comments by the County were also included and a further technical
4 report required.

5 7. In the year from October, 2011 to October, 2012, the formal CAP was subjected to
6 public review prior to implementation. Public review occurred and thereafter SVE was performed.

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8 The project manager advised that ten (10) pounds of PCE had been removed since
9 implementation of SVE. In the first week of October, 2012, SVE was temporarily suspended and
10 sampling conducted. The levels of PCE in samples appeared to have declined, however the levels
11 were still above residential goals, which were then being applied since part of the building next to
12 the drycleaner was used as a Montessori pre-school. Following those results of sampling, SVE
13 was re-started and conducted for an extended period of time, and more pounds of PCE were
14 removed since re-implementation of SVE. In summer 2013, further samples were taken and the
15 levels of PCE had declined significantly, to the point where they were well below cleanup goals.
16 The SVE was again temporarily suspended, and further sampling was conducted. There was
17 minor re-bounce of levels of PCE, however, all samples were still below cleanup goals. Since, in
18 the meantime, the Montessori pre-school had moved to another location, commercial goals were
19 being applied, which was appropriate since there were no longer any residential, or quasi-
20 residential (i.e., the pre-school), parties at the premises. Additional samples were planned to be
21 taken in November 2013 and in January, 2014. Following a November 2013 meeting among
22 representatives of the County, the parties and the parties' environmental consultant, a "road map"
23 to closure was agreed to by all present, which resulted in installation of one more monitoring well,
24 and additional sampling following an opportunity for further rebound, if any. The results
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1 of further sampling of the 19 total monitoring wells over more than a year have seen declining
2 levels with reduced rebound, with only one result marginally exceeding the commercial cleanup
3 goal and no results exceeding the residential cleanup goal. Where levels remain below cleanup
4 goals for a period of a year, or where it can be shown that conditions are stable and present no risk
5 to human health or the environment, a decision is to be made on whether a site can be closed. In
6 the present case, risk calculations have resulted in estimated risk of just over 1×10^{-6} , which is
7 well below what can be allowed (generally 1×10^{-4}). This level is believed to present what is
8 referred to by oversight agencies as an "acceptable risk" level. The parties' environmental
9 consultant has prepared a request for closure to the County, and it expects to submit the request to
10 the County in the next two weeks, with an expected review time of up to 90-days. Based on
11 experience and on the agreed closure "road map," the parties and the parties' environmental
12 consultant feel confident that closure will be granted in approximately January, 2015. Closure,
13 once granted, will require decommissioning monitoring wells, and other actions, which may take a
14 few months, with completion anticipated in approximately March or April, 2015.

17 8. There is a possibility the County will request one more round of sampling, before
18 granting closure. Though not anticipated by the parties and the parties' environmental consultant,
19 if this occurs, grant of closure and completion of closure actions might cause a delay of an
20 estimated additional three or four months, in which case completion could be anticipated in
21 approximately July or August, 2015.

23 9. The Parties are confident that the County will eventually declare closure, because
24 concentrations of PCE have been reduced below remediation goals. The policy is for site closure
25 to be based upon twelve (12) months of sampling below cleanup goals.

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1 10. Remediation is succeeding, but it is not possible to say exactly when site closure
2 will be authorized by the County as oversight agency.

3 11. Once this is accomplished, only the issue of final cost-sharing will need to be
4 determined.

5 12. It is believed that maintaining the case on the Court's docket, and continuing
6 oversight of the Court, through a settlement conference or other dispute resolution proceedings,
7 will allow the Parties to come to an agreement without further litigation.
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9 13. As stated above, since May, 2008, a stay has been in effect upon agreements of the
10 Parties and orders of the Court.

11 14. The Plaintiffs, the Perrys Defendants, the Parks Defendants and the Chiu Family
12 Trust Cross-Defendant (the "Cost-Sharing Parties") have been in compliance with their
13 agreement to contribute to and share certain costs, which agreement was reached at the time of the
14 May 1, 2008, Settlement Conference before Magistrate Judge Laporte. Since that time they have
15 reached further agreements to contribute to and share in the additional costs required to implement
16 the work at the site. The actual payments by each of the Cost-Sharing Parties have been recorded as
17 made, as have expenditures for the costs, and will continue to be accounted for, for future reference
18 and for final cost-sharing agreement. Monies remain in the agreed contribution account. It is hoped
19 that the monies that remain available, or as they may be supplemented, will be sufficient to cover
20 needed work up to the time the County can complete its review of the data and approve site closure.
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23 15. The Plaintiffs, the Perrys Defendants, the Parks Defendants, Cross-Defendant the
24 Chiu Family Trust, and Cross-Defendants Dublin Town & Country Associates and William
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1 Kartoian, have all been in compliance with the stay which was part of their agreement reached at
2 the time of the May 1, 2008, Settlement Conference before Magistrate Judge Laporte, and which
3 stay has been extended by further agreement and orders of the Court.

4 16. With the purpose of minimizing costs to the Parties and the waste of time of this
5 Court, all the Parties (except for Cross-Defendant the Chiu Family Trust, whose original counsel
6 passed away and whose initial replacement counsel has retired and not been replaced), have
7 affirmatively agreed to request a further continuance of the stay and rescheduling of the
8 Status/Case Management Conference before the Court. It is agreed by the Parties that a
9 continuance of the stay and rescheduling of the conference again would be best made for
10 approximately one year – to some time in October, 2015. Should it become apparent prior to that
11 time that closure has been granted and post-closure activities completed, the Parties will report to
12 the Court and take necessary steps to conclude the case.

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15 **C. LEGAL ISSUES.** Legal issues regard responsibility for and allocation of costs for
16 responding to contamination of the Property.

17 **D. MOTIONS.** There are no motions now pending or anticipated. Based on consultation
18 among counsel for all Parties (except for Cross-Defendant the Chiu Family Trust, which is
19 believed presently to be seeking replacement counsel, because its original counsel of record, Mr.
20 Edward W. Polson, has passed away, and since initial replacement counsel, Mr. William A. Hirst,
21 has retired), counsel have agreed to request the Court to grant the requested extension of the stay.

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23 **E. AMENDMENT OF PLEADINGS.** Currently none are expected.

24 **F. EVIDENCE PRESERVATION.** Evidence in the form of lease agreements, property
25 transfer documentation, results of environmental testing, chemical usage, etc., have been
26 preserved.
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1 **G. DISCLOSURES.** Initial disclosures have been made, including but not limited to relevant
2 documents, etc., on costs incurred and reports and communications with regulatory agencies on
3 environmental conditions at the site which is the subject of this action, on purchase and sale
4 agreement and amendments, and on tenants at the property.

5 **H. DISCOVERY.** Discovery has been stayed.

6 **I. CLASS ACTIONS.** None.

7 **J. RELATED CASES.** None.

8 **K. RELIEF.** Fair and equitable cost-sharing and costs-allocation are the relief sought. Response
9 costs are continuing to be incurred, and the Cost-Sharing Parties have records of these costs.
10 Currently it is anticipated that costs should be under \$1 million. Efforts are being made to be
11 cooperative rather than adversarial, in order to keep legal fees and litigation costs to a minimum,
12 so that funds may be most productively used for investigation and remediation.

13 **L. SETTLEMENT AND ADR.** The one settlement conference that occurred successfully led
14 to a cost-sharing agreement and agreement to stay discovery. Once response costs are completed,
15 the Parties anticipate negotiation and possibly use of more formal ADR if necessary. Continuance
16 of this case on the Court's docket should assist the success of this effort.

17 **M. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES.** The Parties were
18 pleased with the results of their settlement conference under the oversight of Magistrate Judge
19 LaPorte, but they have not yet decided, nor do they feel they are ready to decide if all issues can be
20 resolved best by a Magistrate Judge. This may be clearer as final remedy and costs are known.

21 **N. OTHER REFERENCES.** The present cooperation is successful. Should this change, which
22 is not now anticipated, the Parties may revisit the question of other references.

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1 **O. NARROWING OF ISSUES.** The cooperative work to investigate, remediate and close the
2 site has effectively narrowed the issues to a great extent.

3 **P. EXPEDITED SCHEDULE.** The schedule is dependent upon the practical realities of the
4 environment investigation and mitigation process. It is currently being conducted on an efficient
5 and cost-effective basis, even though the case has been on the Court's docket for a long time.

6 **Q. SCHEDULING.** The parties believe it is premature to set hard dates for designation of
7 experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial.
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9 **R. TRIAL.** Whether the case should be tried to a jury or the Court, and estimated length of a
10 trial, are difficult to decide until the investigation and remediation process has been completed.

11 **S. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS.** Initial
12 disclosures have been made by the Parties, including but not limited to interested persons.
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14 **T. OTHER MATTERS TO FACILITATE JUST, SPEEDY, INEXPENSIVE**
15 **DISPOSITION.** The Parties believe the current cooperative efforts are successful.

16 **U. IDENTIFICATION OF LEAD TRIAL COUNSEL**

17 The Plaintiff, with agreement of those Defendants' counsel as stated above, hereby respectfully
18 requests that the Court continue the stay previously ordered in this case until October, 2015. The
19 Plaintiff further respectfully requests that the Court reschedule the pending Status/Case
20 Management Conference to a date in October, 2015. Karl R. Morthole, attorney for the Plaintiffs,
21 hereby attests that a full report of the status of the site was given to the Lead Trial Counsel for the
22 Defendants listed immediately below, and their agreement was obtained to continuing the stay and
23 rescheduling the pending Status/Case Management Conference. On that basis and with their
24 permission, attorney for the Plaintiffs has signed on their behalf as evidence of their agreement.
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2 Sosan Akbar by KRM w/permission

3 Martin Deutsch, 440 North First Street, Suite 200, San Jose, CA 95112, 408-947-1760
4 By Sosan Akbar, Esq., in absence of Mr. Deutsch
5 [Parks Defendants and Cross-Complainants Lead Trial Counsel]

6 Thomas M. Downey by KRM w/permission

7 Thomas M. Downey, 1901 Harrison Street, 11th Floor, Oakland, CA 94612, 510-444-6800
8 [Perrys Defendants Lead Trial Counsel]

9 Greggory C. Brandt by KRM w/permission

10 Greggory C. Brandt, 1111 Broadway, 24th Floor, Oakland, CA 94607-4036, 510-834-6600
11 [Dublin Town & Country Associates and William Kartzian Cross-Defendants Lead Trial
12 Counsel]

13 Date: September 30, 2014

14 Respectfully submitted,

15 LAW OFFICES OF KARL R. MORTHOLE

16 By Karl R. Morthole

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(PROPOSED) ORDER

The Court finds that each party was represented by lead trial counsel responsible for trial of this matter and was given an opportunity to be heard as to all matters encompassed by this Status/Case Management Statement, and (Proposed) Order filed prior to the date of this conference. The Court adopts this statement as modified and enters it as the Order of this Court pursuant to Civ. L.R. 16-8(b).

The foregoing joint statement, as amended by setting the date for the next Status/Case Management Conference for ~~October~~ ^{May 28}, 2015, at 10:30 a.m., is adopted by this Court as the Case Management Order in this action in accordance with Civ. L.R. 16 and other applicable Local Rules, and shall govern all further proceedings in this action. Updated joint CMC Statement due May 14, 2015.

IT IS SO ORDERED.

Date: 10/6/14

