

FILED

FEB 17 2022

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2/16/2022 1:08 PM By _____ DEPT. 502
FRESNO COUNTY SUPERIOR COURT
By: S. Garcia, Deputy

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF FRESNO, CENTRAL DIVISION

17 KAREN MICHELI, et al.,
18 Plaintiffs,
19
20 v.
21 THE CITY OF FRESNO, et al.,
22 Defendants.

23 JACKIE FLANNERY, et al.,
24 Plaintiffs,
25 v.
26 THE CITY OF FRESNO, et al.
27 Defendants.

Case No. 16CECG02937
Consolidated with Case No. 17CECG01724

CLASS ACTION

STIPULATION TO CONTINUE TRIAL
AND RELATED DATES AND
DEADLINES; PROPOSED ORDER

Assigned for All Purposes to:
Hon. Rosemary T. McGuire, Dept. 502

Lead Action Filed: 9/9/2016
Consolidated Action Filed: 5/17/2017
Trial Date: 7/25/2022
Trial Commencement Deadline: 8/9/2022

1 Plaintiffs and Class Representatives Karen Micheli, Michael Micheli, Faith Nitschke,
2 David Nitschke, Jeanette Grider, Jackie Flannery, Guadalupe Meza, Ronda Rafidi, Shann Conner,
3 Marirose Larkins, Patricia Wallace-Rixman, Harry Rixman, and Kelly Unruh (“Plaintiffs”), by
4 and through Plaintiffs / Class Counsel, and Defendant The City of Fresno (“City”), by and through
5 the City’s Counsel, hereby stipulate to the following in the above-captioned, consolidated class
6 action:

7 **STIPULATION**

8 WHEREAS, Code of Civil Procedure (“CCP”) section 583.310 states, “[a]n action shall be
9 brought to trial within five years after the action is commenced against the defendant”;

10 WHEREAS, the parties may “extend the time within which an action must be brought to
11 trial ... (a)[b]y written stipulation” pursuant to CCP section 583.330;

12 WHEREAS, the first-filed action in this consolidated, class action proceeding, *Micheli, et*
13 *al. v. City of Fresno*, Fresno Superior Court Case No. 16CECG02937, was commenced by the
14 filing of *Micheli* Plaintiffs’ Class Action Complaint on September 9, 2016;

15 WHEREAS, the second-filed action in this consolidated, class action proceeding,
16 *Flannery, et al. v. City of Fresno*, Fresno Superior Court Case No. 17CECG01724 was
17 commenced by the filing of *Flannery* Plaintiffs’ Class Action Complaint on May 17, 2017;

18 WHEREAS, the Court ordered the *Micheli* and *Flannery* actions related and consolidated
19 for all purposes including trial pursuant to the parties’ stipulated request on August 17, 2017;

20 WHEREAS, Plaintiffs in the *Micheli* and *Flannery* actions are pursuing claims against the
21 City for Negligence, Nuisance, Breach of Contract, and Breach of Implied Warranty asserted in
22 the operative Consolidated Fifth Amended Class Action Complaint that the Court certified for
23 class action treatment by orders granting Plaintiffs’ renewed motion for class certification, dated
24 July 30, 2021 and August 2, 2021;

25 WHEREAS, pursuant to the July 2, 2019 Stipulated Order Continuing Schedule on Class
26 Certification Motion and CCP section 583.330, the parties stipulated to extend the statutory
27 deadlines to bring the consolidated cases to trial pursuant to CCP section 583.310 by five months,
28 to allow the parties to conduct certain limited expert discovery and to accommodate a continuance

1 of the class certification schedule (7/2/2019 Stipulated Order);

2 WHEREAS, in April, 2020, the Judicial Council adopted Emergency Rule 10 in response
3 to the ongoing COVID-19 Pandemic, extending the time in which to bring a civil action to trial by
4 six months for civil actions filed on or before April 6, 2020;

5 WHEREAS, Plaintiffs and the City agreed on the record at the August 31, 2021 Case
6 Management Conference that the statutory deadline to commence trial of the consolidated *Micheli*
7 and *Flannery* cases pursuant to CCP section 583.310 *et seq.*, taking into consideration the above-
8 referenced extensions of the deadline totaling 11 months, is August 9, 2022;

9 WHEREAS, the Court set the following trial schedule by order dated August 31, 2021;

- 10 ▪ JURY TRIAL: July 25, 2022, at 9:00 A.M., in Dept. 503 (30-day estimate);
- 11 ▪ MANDATORY SETTLEMENT CONFERENCE: June 29, 2022, at 10:00 A.M., in
12 Room 575 of the Fresno County Superior Court;
- 13 ▪ TRIAL READINESS CONFERENCE: July 22, 2022, at 9:30 A.M., in Dept. 503 of the
14 Fresno County Superior Court;

15 WHEREAS, the City anticipates filing multiple dispositive motions for summary judgment
16 and/or adjudication before trial, and reserved hearing dates on June 2, 2022, June 9, 2022, June 16,
17 2022, June 23, 2022, and June 30, 2022 for that purpose, which at the time, were the next-
18 available hearing dates on the Court's calendar;

19 WHEREAS, the parties, by and through their respective counsel, agree good cause exists
20 for a continuance of trial and all trial-related dates and deadlines given the delays caused by
21 protracted disputes over discovery, class certification, and class notice, as well as the impact of the
22 COVID-19 Pandemic on court operations, to provide more time in advance of trial for the Court to
23 hear and rule on dispositive motions, such as motions for summary judgment and/or adjudication,
24 the need to prepare for trial and participate in ADR such as private mediation before trial, and the
25 Court has invited the parties to consider a continuance of trial;

26 WHEREAS, Plaintiffs maintain their position that each side should be limited to one
27 dispositive motion for summary judgment and/or adjudication in this certified class action and
28 object to the City's intent to file no less than 10 separate motions for summary judgment and/or

1 adjudication at this time, and neither this stipulation nor any continuance of trial alters or waives
2 Plaintiffs' position or objection, for which Plaintiffs reserve all rights;

3 WHEREAS, this is the first request for a continuance of trial and trial-related dates and
4 deadlines;

5 NOW, THEREFORE, PLAINTIFFS AND THE CITY, BY AND THROUGH THEIR
6 RESPECTIVE COUNSEL OF RECORD, STIPULATE TO THE FOLLOWING:

7 1. Plaintiffs and the City stipulate and agree, pursuant to CCP section 583.330, to
8 extend the statutory deadline to bring the above-captioned consolidated action to trial pursuant to
9 CCP section 583.310, by approximately nine months from the current deadline of August 9, 2022,
10 to May 9, 2023.

11 2. The trial commencement date of July 25, 2022 should be continued by
12 approximately nine months, to April 17, 2023, or as soon thereafter as the Court is available, with
13 all trial-related or trial-based dates, deadlines, and cut-offs, including but not limited to fact and
14 expert discovery cut-offs, the trial readiness conference and mandatory settlement conference, to
15 be continued and reset pursuant to the Code of Civil Procedure based on the continued trial date.

16 3. The parties agree there is no need to send further notice by mail, email, or other
17 means to potential class members of the continued trial date. The parties further agree information
18 on the continued trial date, time, and location may be posted to the Notice Administrator's website
19 (<https://www.cptgroupcaseinfo.com/DiscoloredWaterLawsuit/>), along with a copy of the Court's
20 order of continuance, which posting shall be maintained through disposition of the case. Any costs
21 of further notice to potential Class Members, should the Court require notice by mail regarding the
22 continuance of the trial date or should the Notice Administrator charge an additional amount for
23 maintaining the notice website through disposition of the case, shall be split evenly between the
24 parties.

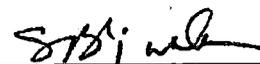
25 4. Plaintiffs and the City agree to participate in at least one full day of private
26 mediation before a mutually-selected mediator by August 31, 2022.

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DATED: February 15, 2022

BOUCHER LLP

By: 
RAYMOND P. BOUCHER
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LAW OFFICE OF MICHAEL E. GATTO
MICHAEL E. GATTO

Attorneys for Plaintiffs and Class Members

DATED: February 15, 2022

CAUFIELD & JAMES LLP

By: _____
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MATTHEW D. MCMILLAN

CITY ATTORNEY FOR CITY OF FRESNO
TINA R. GRIFFIN, Chief Assistant City Attorney

Attorneys for Defendant City of Fresno

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DATED: February 15, 2022

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Attorneys for Plaintiffs and Class Members

DATED: February 15, 2022

CAUFIELD & JAMES LLP

By:  _____
JEFFERY L. CAUFIELD
MATTHEW D. MCMILLAN

CITY ATTORNEY FOR CITY OF FRESNO
TINA R. GRIFFIN, Chief Assistant City Attorney

Attorneys for Defendant City of Fresno

1 **[PROPOSED] ORDER**

2 The Court, having considered the stipulations and joint requests by the Parties for a
3 continuance of trial and trial-related dates and deadlines, hereby determines good cause exists for
4 entry of the following orders:

5 1. The statutory deadline to bring the above-captioned, consolidated action to trial
6 pursuant to Code of Civil Procedure section 583.310, is hereby extended by the stipulation of
7 Plaintiffs and the City pursuant to Code of Civil Procedure section 583.330, to May 9, 2023.

8 2. The trial commencement date of July 25, 2022 and all trial-related or trial-based
9 dates, deadlines, and cut-offs, including but not limited to fact and expert discovery cut-offs, the
10 trial readiness conference and mandatory settlement conference, are hereby continued by
11 approximately nine months, and re-set to the following dates:

- 12 ▪ JURY TRIAL: 4/17/ 2023, at 9:00 A.M., in Dept. 503 (30-day estimate);
- 13 ▪ MANDATORY SETTLEMENT CONFERENCE: 3/29/2023, at 10:00
14 A.M., in _____ of the Fresno County Superior Court;
- 15 ▪ TRIAL READINESS CONFERENCE: 4/14/2023 at 9:30 A.M., in Dept.
16 503 of the Fresno County Superior Court;

17 3. Information on the continued trial date, time, and location will be posted to the
18 Notice Administrator's website (<https://www.cptgroupcaseinfo.com/DiscoloredWaterLawsuit/>),
19 along with a copy of the Court's order of continuance, which posting shall be maintained through
20 disposition of the case. Any costs of further notice to potential Class Members shall be split evenly
21 between the parties.

22 4. Parties will participate in at least one day of private mediation before a mutually-
23 selected mediator by August 31, 2022.

24 IT IS SO ORDERED.

25 DATED: February 17, 2022

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28 HON. ROSEMARY T. MCGUIRE

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PROOF OF SERVICE

**Karen Micheli, et al. v. The City of Fresno, et al.
Lead Case No. 16CECG02937**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 21600 Oxnard Street, Suite 600, Woodland Hills, CA 91367-4903.

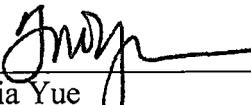
On February 15, 2022, I served true copies of the following document(s) described as **STIPULATION TO CONTINUE TRIAL AND RELATED DATES AND DEADLINES; PROPOSED ORDER** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: Pursuant to Code of Civil Procedure section 1010.6 and California Rule of Court 2.251, or pursuant to the Court's order authorizing electronic service, or by an agreement of the parties, I caused the document(s) to be sent from e-mail address Yue@boucher.la to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 15, 2022, at Woodland Hills, California.



Tricia Yue

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SERVICE LIST
Karen Micheli, et al. v. The City of Fresno, et al.
Lead Case No. 16CECG02937

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