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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

EXXONMOBIL OIL CORPORATION,  
  
Plaintiff,  
  
v.  
  
NICOLETTI OIL, INC., *et al.*,  
  
Defendants.

No. 1:09-cv-01498-OWW-DLB

**ORDER REGARDING DEFENDANTS'  
MOTION TO DISMISS FIRST  
AMENDED COMPLAINT**

Hearing Date: May 10, 2010  
Time: 10:00 a.m.  
Courtroom: 3

Hon. Oliver W. Wanger

The motion of Defendants Nicoletti Oil, Inc., Dino J. Nicoletti and John A. Nicoletti (collectively, "Defendants") to dismiss Plaintiff ExxonMobil Oil Corporation's ("Plaintiff") First Amended Complaint under Rules 8(a) and 12(b)(6) of the Federal Rules of Civil Procedure came on regularly for hearing before this Court. All parties received notice and an opportunity to be heard. After considering the pleadings and memoranda submitted by the parties, and all supporting papers,

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1 and having heard the arguments of counsel, and good cause  
2 appearing therefor, **IT IS HEREBY ORDERED** that:

3 1. Defendants' motion to dismiss Plaintiff's claim  
4 for express contractual indemnity is **GRANTED with leave to**  
5 **amend**. The First Amended Complaint fails to allege facts  
6 sufficient to support the notion that defendant Dino Nicoletti  
7 is personally liable under the contracts at-issue.

8 2. Defendants' motion to dismiss Plaintiff's express  
9 contractual indemnity claim on the basis of the statute of  
10 limitations is **DENIED**.

11 3. Defendants' motion to dismiss Plaintiff's claim  
12 for negligence is **GRANTED with leave to amend**. In order to  
13 establish a special relationship giving rise to a duty of care,  
14 Plaintiff must allege facts which demonstrate that Defendants'  
15 had actual knowledge that their conduct would directly affect  
16 Plaintiff. The First Amended Complaint lacks the necessary  
17 allegations. The First Amended Complaint sufficiently pleads a  
18 breach of duty.

19 4. Plaintiff shall file an amended complaint within  
20 fifteen (15) days of entry of this Order.

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1           5. Defendants shall file a response within fifteen  
2 (15) days of service of the amended complaint.

3  
4 IT IS SO ORDERED.

5 Dated: May 26, 2010

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE