

SOMACH SIMMONS & DUNN
A Professional Corporation

1 SOMACH, SIMMONS & DUNN
A Professional Corporation
2 MICHAEL E. VERGARA, ESQ. (SBN 137689)
KANWARJIT S. DUA, ESQ. (SBN 214591)
3 813 Sixth Street, Third Floor
Sacramento, California 95814
4 Telephone: (916) 446-7979
Facsimile: (916) 446-8199
5 mvergara@somachlaw.com
kdua@somachlaw.com

6 Attorneys for Plaintiff James Kotrous

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 JAMES KOTROUS, individually and doing)
11 business as THE MATTRESS FACTORY,)
12)
Plaintiffs,)
13 v.)
14 GOSS-JEWETT COMPANY OF NORTHERN)
CALIFORNIA, INC., et al)
15)
Defendants.)
16 _____)

Case No. CIV S-02-1520 FCD JFM

**STIPULATION AND ORDER
TO FILE SECOND AMENDED
COMPLAINT**

17 AND RELATED CLAIMS.
18 _____)

19 WHEREAS plaintiff James Kotrous, Individually and doing business as The Mattress
20 Factory (collectively referred to as “Kotrous”), filed his Amended Complaint in the above action
21 against multiple defendants on November 22, 2002;

22 WHEREAS, the impact of the recent U.S. Supreme Court decision in *United States v. Atl.*
23 *Research Corp.*, 127 S.Ct. 2331 (2007) interpreting key provisions of the Comprehensive
24 Environmental Response, Compensation and Liability Act (“CERCLA”), necessitates a further
25 amendment of the pleadings. Accordingly, the Second Amended Complaint amends the
26 pleadings to include a cause of action for cost recovery on a several basis or contribution basis
27 pursuant to CERCLA section 107(a), 42 U.S.C. § 9607(a), consistent with the *Atlantic* decision
28 and Ninth Circuit case law.

1 WHEREAS, the parties have all agreed that the interests of the parties as well as judicial
2 economy are best served by stipulating to the filing of the attached Second Amended Complaint
3 and revising the schedule set forth in the May 8, 2009 Pretrial Scheduling Order as opposed to
4 Kotrous filing a motion seeking leave to amend the pleadings.

5 WHEREAS, to promote efficiency and in the interest of justice, the parties hereto stipulate
6 to extend the time for defendants to file responsive pleadings to Kotrous's Second Amended
7 Complaint until 30 days after the Court approves this Stipulation and Order.

8 WHEREAS, to promote efficiency and in the interest of justice, the parties hereto stipulate
9 to revise the schedule set forth in the May 8, 2009 Pretrial Scheduling Order to extend the time
10 for the parties to serve additional defendants until 30 days after the Court approves this
11 Stipulation and Order;

12 **THEREFORE, IT IS HEREBY STIPULATED** by and between the parties hereto that:
13 (1) Kotrous may file the attached Second Amended Complaint; (2) defendants shall have until 30
14 days after the Court approves this Stipulation and Order to file responsive pleadings to Kotrous'
15 Second Amended Complaint; and (3) the parties shall have until 30 days after the Court approves
16 this Stipulation and Order to serve additional defendants .

17
18
19 DATED: _____

SOMACH SIMMONS & DUNN
A Professional Corporation
By _____/s/
Kanwarjit S. Dua
Attorneys for JAMES KOTROUS dba as Mattress
Factory

22
23 DATED: _____

SCHARFF, BRADY & VINDING
By _____/s/
Jeffory J. Scharff
Defendants Rosalie A. Anselmo and Karen L.
Lilenthal as Co – Trustees under that certain
document entitled “The Edward A. Anselmo and
Rosalie A. Anselmo 1992 Revocable Trust,” dated
December 21 1992

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EDGCOMB LAW GROUP

DATED: _____

By _____ /s/
William Marsh
Attorneys for Defendant, Bayer Cropscience, Inc.

GREVE, CLIFFORD, WENGEL & PARAS, LLP

DATED: _____

By _____ /s/
Gary L. Vinson
Attorneys for Cross-Defendant, Kleinfelder, Inc.

NOLEN AND ASSOCIATES

DATED: _____

By _____ /s/
Stephen W. Owens
Attorneys for Cross-Defendant, Ramage
Environmental and Joseph Ramage

WILSON, ELSER, MOSKOWITZ, EDELMAN
and DICKER

DATED: _____

By _____ /s/
Emily M. Weissenberger
Attorneys for Cross-Defendant Rah
Environmental, Inc.

BRYDON HUGO & PARKER

DATED: _____

By _____ /s/
Ronald The'
Attorneys for Defendants Goss-Jewett Company of
Northern California, Inc., a California corporation,
Michael Lamanet and Steven Lamanet


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

Based on the foregoing stipulation, and good cause existing therefore, IT IS HEREBY ORDERED THAT the Court's May 8, 2009 Pretrial Scheduling Order shall be revised such that: (1) Plaintiff James Kotrous, Individually and doing business as The Mattress Factory may file the attached Second Amended Complaint; (2) defendants shall have until 30 days after the Court approves this Stipulation and Order to file responsive pleadings to Plaintiff's Second Amended Complaint; and (3) the parties shall have until 30 days after the Court approves this Stipulation and Order to serve additional defendants. **The Court hereby directs plaintiff's counsel to file the Second Amended Complaint.**

IT IS SO ORDERED.

Dated: August 18, 2009


FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE