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 8 NATIONWIDE AGRIBUSINESS INSURANCE, and NATIONWIDE MUTUAL  
 9 INSURANCE COMPANY

10 **IN THE UNITED STATES DISTRICT COURT**  
 11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

12 NATIONWIDE AGRIBUSINESS  
 13 INSURANCE; and NATIONWIDE  
 14 MUTUAL INSURANCE COMPANY,

15 Plaintiffs,

16 v.

17 GEORGE PERRY AND SONS, INC.;  
 18 and PAUL GOMES,

19 Defendants.

CASE NO.: 2:17-cv-01910-KJM-CKD

*Assigned to: Honorable Kimberly J. Mueller*

**STIPULATION AND ORDER TO  
 LIFT STAY TO TAKE LIMITED  
 DISCOVERY FROM GARY MATTES**

20 UNIGARD INSURANCE COMPANY  
 21 and ONEBEACON INSURANCE  
 22 COMPANY,

23 Plaintiffs,

24 v.

25 GEORGE PERRY AND SONS, INC., a  
 26 California Corporation, GARY  
 27 MATTES, individually and dba GARY'S  
 28 APIARIES and DOES 1 through 20,  
 inclusive,

Defendants.

CASE NO.: 2:18-cv-00188-KJM-CKD

*Assigned to: Honorable Kimberly J. Mueller*

1 **THE PARTIES**

2 Plaintiffs in the related, captioned insurance coverage actions are  
3 NATIONWIDE AGRIBUSINESS INSURANCE, and NATIONWIDE MUTUAL  
4 INSURANCE COMPANY (“Nationwide”) in Case No. 2:17-cv-01910-KJM-CKD  
5 and UNIGARD INSURANCE COMPANY and ONEBEACON INSURANCE  
6 COMPANY (collectively, “Unigard), in Case No. 2:18-cv-00188-KJM-CKD.

7 GEORGE PERRY & SONS, INC. (“Perry”) is a Defendant in both cases, but  
8 GARY MATTES, individually, and doing business as GARY’S APIARIES, is a  
9 Defendant in only the Unigard action (Case No. 2:18-cv-00188-KJM-CKD).

10 Nevertheless, these parties collectively enter into the following stipulation.

11 **PURPOSE OF STIPULATION**

12 Plaintiffs moved for summary judgment in their respective insurance coverage  
13 cases for a finding of no coverage for Perry arising from an underlying liability action:  
14 *Gary Mattes, et al v. George Perry and Sons, Inc.*, San Joaquin County Superior Court  
15 case number STK-CV-UPI-2013-0012146 (“*Mattes v. Perry*”). Defendants opposed  
16 the motions. The Court presided over hearings on both motions, as well as over a  
17 hearing on Defendant Perry’s motions to stay each respective coverage action until  
18 resolution of the underlying *Mattes v. Perry* liability action.

19 During hearings on the motions for summary judgment, the Court reached an  
20 agreement with the Plaintiffs that both coverage actions would be stayed pending  
21 rulings on the motions for summary judgment. The Court eventually denied Plaintiffs’  
22 motions for summary judgment, and asked all the parties to consider and respond with  
23 their respective positions on whether the stays as to each coverage action should  
24 continue. In response, the parties prepared a Joint Status Report, with the Plaintiffs  
25 setting forth their respective positions on why the stay should be lifted entirely, or, in  
26 the alternative, that the stay be modified so as to permit limited discovery from  
27 Defendants Perry and Mattes. Defendant Perry’s position opposed any lifting or  
28 modification of the stay. Mattes affirmatively took no position.

1 During the November 1, 2018 Status Conference, Plaintiffs and Defendant Perry  
2 responded to the Court’s preliminary findings and argued their respective positions.  
3 Defendant Mattes took no position. The Court indicated that there were bases to grant  
4 some, limited relief from the stay—primarily discovery that might be taken from  
5 Defendant Mattes due to concerns regarding his health. The Court asked the parties to  
6 attempt to reach agreement through stipulation that would permit the deposition of  
7 Gary Mattes on the limited grounds consistent with Plaintiffs’ requests in regard to  
8 facts surrounding Mattes’ activities evidencing any control he may have exercised over  
9 his bees and hives. That same day, the Court issued two, almost identical, Minute  
10 Orders directing that “within seven (7) days the parties shall file a stipulation and  
11 proposed order that provides for the taking of Mr. Mattes’ deposition, or if the parties  
12 are unable to reach an agreement, a motion to compel noticed before the Magistrate  
13 Judge.”

14 Consistent with the Court’s respective minute orders, the Parties stipulate as  
15 follows:

16 **STIPULATION**

17 1. Pursuant to FRCP Rule 30 Plaintiff Unigard shall serve a notice of the  
18 deposition of Gary Mattes by November 13, 2018.

19 2. The location of the deposition shall be at SHER EDLING LLP, 100  
20 Montgomery Street, Suite 1410, San Francisco, California (628) 231-2500; and will  
21 commence on December 13, 2018, but only after the parties in the underlying *Mattes v.*  
22 *Perry* matter complete their own deposition of Mr. Mattes. Upon that completion, the  
23 Plaintiffs in the instant, related coverage actions shall commence their deposition of Mr.  
24 Mattes, and are permitted to depose Mr. Mattes for 2.5 hours, excluding any redirect  
25 that Defendants in the instant, related coverage actions may offer. In order to preserve  
26 enough time, Plaintiffs in the instant, related coverage actions shall notice Mr. Mattes’  
27 deposition to continue or commence on December 14, and shall commence and continue  
28 at SHER EDLING LLP’s offices. This deposition of Mr. Mattes shall be before a

1 certified court reporter, and shall be taken by stenographic and audiovisual means.

2 3. All parties to this Stipulation shall be permitted to question Mr. Mattes  
3 pursuant to the above time limitations; but all parties' questions shall be limited in  
4 scope. All questions must relate to Mr. Mattes' exercise of possession, custody, and or  
5 control over his bees and their hives while Mattes' bees pollinated Perry's crops/fields  
6 from approximately 2009 through 2012.

7 4. At least ten calendar days prior to Mr. Mattes' deposition, any party to this  
8 stipulation may serve a written request for production of documents relating to Mr.  
9 Mattes' exercise of possession, custody, and or control over his bees and their hives  
10 while Mattes' bees pollinated Perry's crops/fields from approximately 2009 through  
11 2012.

12 5. Any document produced prior to and at the Mattes deposition pursuant to  
13 this stipulation shall be deemed inadmissible in the underlying Mattes liability action,  
14 unless said document is obtained by parties in the underlying Mattes liability action  
15 through valid procedural and discovery means in that underlying Mattes liability action.

16 6. Absent a court order from a court with competent jurisdiction to the  
17 contrary, Mr. Mattes' deposition testimony and deposition transcript taken pursuant to  
18 this stipulation shall be inadmissible in the underlying Mattes liability case—including,  
19 but not limited to, trial of the underlying Mattes liability case, appeal and remand for  
20 further issues and or new trial.

21 7. Within fifteen (15) days after service of the deposition transcript (or notice  
22 thereto) to Mr. Mattes' counsel, Mr. Mattes shall make all corrections thereto and sign  
23 the deposition. If, after said fifteen (15) days, Mr. Mattes has not made corrections and  
24 signed the deposition, the transcript shall be deemed final and correct pursuant to FRCP  
25 Rule 30(e).

26 8. Except for the limited discovery permitted in paragraphs 3 and 4 above, or  
27 to the extent any party obtains further relief from the stay, the Court's stay shall remain  
28 in full force and effect pending full and final resolution of the underlying Mattes liability

1 actions against Perry.

2 IT IS SO STIPULATED.

3 Dated: November 9, 2018

COZEN O'CONNOR

4  
5 By: /s/ Fulton M. Smith III

Fulton M. Smith III

6 Attorneys for

7 NATIONWIDE AGRIBUSINESS

INSURANCE and NATIONWIDE

8 MUTUAL INSURANCE COMPANY

9 Dated: November 9, 2018

SELVIN WRAITH HALMAN LLP

10  
11 By: /s/ Gary L. Selvin

Gary R. Selvin

12 Robin D. Korte

13 Attorneys for Plaintiffs

14 UNIGARD INSURANCE COMPANY and

ONEBEACON INSURANCE COMPANY

15 Dated: November 9, 2018

DOWNEY BRAND LLP

16  
17 By: /s/ John C. McCarron

John C. McCarron

18 Attorneys for

19 GEORGE PERRY AND SONS, INC.

20 Dated: November 9, 2018

SHER EDLING LLP

21  
22 By: /s/ Katie H. Jones

Katie H. Jones

23 Attorneys for

24 GARY MATTES dba GARY'S APIARIES

ORDER

The parties having stipulated pursuant to the options set forth in the Court's November 1, 2018 Minute Order (EFC 48), and GOOD CAUSE being demonstrated, the Court hereby orders that the stay currently in effect for this matter be lifted for the limited purpose of taking discovery from Gary Mattes in a manner consistent with the limits and guidelines set forth by the parties in the STIPULATION.

IT IS SO ORDERED

DATE: November 14, 2018.



UNITED STATES DISTRICT JUDGE