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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SPPI-SOMERSVILLE, INC., et al.,  
  
Plaintiffs,  
  
v.  
  
TRC COMPANIES, INC., et al,  
  
Defendants.

Case No. C 04-2648 SI  
  
Consolidated with C 07-5824-SI

**STIPULATION AND [PROPOSED]  
ORDER DEEMING COURT’S RULING  
ON CONTINUING NUISANCE AND  
TRESPASS CLAIMS AGAINST THE  
“GENERATOR DEFENDANTS” AND THE  
PREWETTS IN CASE NO. 04-02225 AS  
THE COURT’S RULING ON PLAINTIFFS’  
CONTINUING NUISANCE AND  
TRESPASS CLAIMS AGAINST THE  
“GENERATOR DEFENDANTS” AND THE  
PREWETTS IN THIS CASE**

SPPI-SOMERSVILLE, INC.,  
SOMERSVILLE-GENTRY, INC.,  
  
Plaintiffs,  
  
v.  
  
CHEVRON U.S.A., INC., as successor to  
STANDARD OIL OF CALIFORNIA,  
INC.,  
  
Defendants.

AND RELATED 3RD PARTY CROSS-  
CLAIMS AND COUNTER-CLAIMS.

1 Pursuant to Local Rule 7-12, Plaintiffs SPPI-SOMERSVILLE, INC. (“SPPI”) and  
 2 SOMERSVILLE-GENTRY, INC. (“SGI”) (collectively, “Plaintiffs”); Defendants HAROLD  
 3 WILLIAM PREWETT and MARY GRACE PREWETT BERTSCH (collectively, the  
 4 “Prewetts”); and Defendants LOCKHEED MARTIN CORPORATION, SHELL OIL  
 5 COMPANY, BEAZER EAST, INC., USX CORPORATION, UNION PACIFIC RAILROAD  
 6 COMPANY, EXXON MOBIL CORPORATION, CATERPILLAR INC., AVENTIS  
 7 CROPSCIENCE USA INC., BOEING SATELLITE SYSTEMS, INC., CHEMICAL &  
 8 PIGMENT CO., COLGATE-PALMOLIVE COMPANY, COOPER INDUSTRIES, INC.,  
 9 CROMPTON CORPORATION, GAYLORD CONTAINER CORPORATION, GREAT  
 10 WESTERN CHEMICAL COMPANY, HEWLETT PACKARD COMPANY, NESTLE USA,  
 11 INC., OCCIDENTAL CHEMICAL CORPORATION, OCEAN VIEW CAPITAL, INC.,  
 12 PACCAR INC., PRO TEC CHEMICAL CO., INC., QUEBECOR PRINTING SAN JOSE, INC.,  
 13 SHULLER INTERNATIONAL, INC., HENRY SIMONSEN, UNION OIL COMPANY OF  
 14 CALIFORNIA, WITCO CORPORATION, ASHLAND, INC., CROWN BEVERAGE  
 15 PACKAGING, INC., DOW CHEMICAL COMPANY, E.I. DUPONT DE NEMOURS AND  
 16 COMPANY, FAIRCHILD SEMICONDUCTOR CORPORATION, FAIRCHILD  
 17 SEMICONDUCTOR CORPORATION OF CALIFORNIA, RAYCHEM CORPORATION  
 18 (collectively, the “Generator Defendants”), by and through their respective undersigned counsel,  
 19 hereby stipulate and agree as follows:

### 20 RECITALS

- 21 1. Plaintiffs have pled claims in this action against the Prewetts and against the  
 22 Generator Defendants for continuing nuisance and for continuing trespass.
- 23 2. In the related case *West Coast Homebuilders, Inc. v. Aventis Cropscience et al.*  
 24 (Case No. 04-02225) also before this Court, the Court granted summary adjudication in favor of  
 25 the Prewetts and the Generator Defendants on plaintiff West Coast Home Builders’ fifth and sixth  
 26 claims for continuing nuisance and continuing trespass. (Dkt. 247 at 12:5-14:23.)
- 27 3. In each action, Plaintiffs assert identical factual and legal grounds for the liability  
 28 of the Prewetts and the Generator Defendants pursuant to Plaintiffs’ continuing nuisance and

1 continuing trespass claims.

2 4. In this case, the Court stated in its August 21, 2009, Order Re: Summary Judgment  
3 Motions, as follows:

4 [I]n light of this order and the companion order in *West Coast*,  
5 where the Generator defendants did file an affirmative motion, the  
6 Court is of the view that plaintiffs' continuing nuisance and trespass  
7 claims could not proceed to trial against the Generator defendants.  
8 The same holds for plaintiffs' continuing nuisance and trespass  
9 claims against the Prewetts, for all of the reasons stated in the *West*  
10 *Coast* summary judgment order.

11 (Order (Dkt. 517) at p. 30 n. 19.)

12 5. Plaintiffs believe that the Generator Defendants and the Prewetts do have liability  
13 pursuant to Plaintiffs' continuing nuisance and continuing trespass claims, and disagree with the  
14 Court's ruling, but are willing to enter into this stipulated order in light of the Court's statements.  
15 The Generator Defendants and the Prewetts dispute that they have any liability.

16 **STIPULATION**

17 On the condition that it is entered as an Order of the Court, the Parties hereby stipulate  
18 that the Court's ruling on the Prewett and Generator Defendants' motion for summary  
19 adjudication on plaintiff West Coast Home Builders' causes of action for continuing nuisance and  
20 trespass in the related case *West Coast Homebuilders, Inc. v. Aventis Cropscience et al.* (Case No.  
21 04-02225) shall be treated as a dispositive summary adjudication ruling by the Court of Plaintiffs'  
22 causes of action for continuing nuisance and continuing trespass against the Prewetts and the  
23 Generator Defendants in this case, so that Plaintiffs in this case would have the same right of  
24 appeal on this ruling as plaintiff West Coast Home Builders in Case No. 04-02225.

25 IT IS SO STIPULATED.  
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DATED: September \_\_, 2009 DOWNEY BRAND LLP


By: /s/ Clifton McFarland  
CLIFTON J. MCFARLAND  
Attorneys for Defendants  
PREWETTS and THE GENERATOR DEFENDANTS

DATED: September \_\_, 2009 FARELLA BRAUN + MARTEL LLP

By: /s/ James H. Colopy  
JAMES H. COLOPY  
Attorneys for Plaintiffs  
SPPI-SOMERSVILLE, INC., and SOMERSVILLE-  
GENTRY, INC.

**ORDER**

Pursuant to the foregoing Stipulation of the parties, it is hereby ordered that the Court’s ruling on the Prewett and Generator Defendants’ motion for summary adjudication on plaintiff’s causes of action for continuing nuisance and continuing trespass in the related case *West Coast Homebuilders, Inc. v. Aventis Cropscience et al.* (Case No. 04-02225) shall be treated as a dispositive summary adjudication ruling by the Court of Plaintiffs’ causes of action for continuing nuisance and continuing trespass against the Prewetts and the Generator Defendants in this case, so that Plaintiffs in this case would have the same right of appeal on this ruling as plaintiff West Coast Home Builders in Case No. 04-02225.

DATED: \_\_\_\_\_ By:   
THE HONORABLE SUSAN ILLSTON  
UNITED STATES DISTRICT JUDGE