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7 Attorney for Plaintiffs
8 BRUCE A. BURROWS and
9 JAMES A. ROESSLER

10 UNITED STATES DISTRICT COURT Doc: 104

11 NORTHERN DISTRICT OF CALIFORNIA

12 BRUCE A. BURROWS and JAMES A.
13 ROESSLER,
14 Plaintiffs

15 CASE NO. C 07-5354 EMC

16 PLAINTIFFS'
17 UPDATED STATUS/CASE
18 MANAGEMENT STATEMENT,
19 AND (PROPOSED) ORDER

20 DWIGHT W. PERRY, CARLETON L.
21 PERRY, KWANG SUK LEE, KUI JA LEE,
22 NAM SUN PARK AND SEUNG HEE
23 PARK,

24 DATE: November 9, 2015

25 Defendants.

26 TIME: 10:30 a.m.

27 PLACE: Crt #5, 17th Floor

28 AND RELATED COUNTERCLAIMS AND
CROSSCLAIMS.

29 Pursuant to Civil Local Rule ("Civ. L.R.") 16-9, the Standing Order for All Judges of the Northern
30 District of California on Contents of Joint Case Management Statements, and Paragraph 6 of this
31 Court's Civil Standing Order – General, the Plaintiffs submit this Updated Status/Case Management
32 Statement, and Proposed Order. Plaintiffs certify that its lead trial counsel, who will

1 try this case, met and conferred with counsel for Defendants the Perrys, the Parks and
2 Kartoizian/Dublin Town & Country Associates for the preparation of this Statement as required by
3 Civ. L.R. 16-3. The original counsel for Cross-Defendant Chiu Family Trust has passed away, his
4 replacement has retired, and no further replacement counsel has appeared in the case.

5 The Plaintiffs make the following representations and stipulations:

6
7 **A. JURISDICTION, VENUE AND SERVICE.**

8 1. *This paragraph is unchanged from the previous Updated Statement.*

9 **B. STATEMENT OF FACTS AND EVENTS UNDERLYING THE ACTION.**

10 2. This action was brought originally in October, 2007. Following a settlement
11 conference before Magistrate Judge Laporte, the Parties reached agreement to share in costs of
12 investigation and necessary remediation and also agreed to seek a stay on further discovery beyond
13 initial disclosures, etc., to allow the Parties to minimize costs and to cooperate as far as possible with
14 each other and the County to investigate and remediate the environmental problems at the site. Since
15 that time, upon the joint stipulation of all the Parties, the stay has been continued and scheduled dates
16 for case management conferences have been re-scheduled by order of the Court, as the Parties and
17 the County have worked together.

18
19 3. The formal Corrective Action Plan ("CAP") has been completed. Soil vapor
20 extraction ("SVE") has been performed. The results of sampling of monitoring wells over
21 more than four years have seen declining levels, most recently with no PCE concentrations
22 exceeding either the commercial cleanup goal or the residential cleanup goal. The Parties'
23 environmental consultant has renewed its request for closure. At the most recent meeting with the
24 County in mid-October, 2015, results were discussed, and the Parties are awaiting a response from
25
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1 the County, expected to be in favor of closure. Closure, once granted, will require
2 decommissioning monitoring wells, and other actions, which may take a few months.

3 4. Remediation has succeeded.

4 5. The Parties are confident the County will declare closure.

5 6. Once this is accomplished, only the issue of final cost-sharing will need to be
6 determined. It is believed that maintaining the case on the Court's docket will allow the Parties to
7 come to an agreement without further litigation. The Parties are considering stipulating together to
8 a dismissal without prejudice. A form of Voluntary Joint Stipulation for Dismissal Without
9 Prejudice and (Proposed) Order is attached as Exhibit A and is presently circulating. Already
10 agreed to by most of the Parties, it is still under consideration by one Party as this is written.

11 7. To minimize costs and waste of time, the Plaintiffs request further continuance of
12 the stay and rescheduling the Status/Case Management Conference to sometime in May, 2016.
13 Should earlier closure be granted, the Parties would expect to dismiss the case.

14 **C. LEGAL ISSUES.** Responsibility for and allocation of costs for responding to contamination.

15 **D. MOTIONS.** None now pending or anticipated.

16 **E. AMENDMENT OF PLEADINGS.** None are expected.

17 **F. EVIDENCE PRESERVATION.** Evidence has been preserved.

18 **G. DISCLOSURES.** Initial disclosures have been made.

19 **H. DISCOVERY.** Discovery has been stayed.

20 **I. CLASS ACTIONS.** None.

21 **J. RELATED CASES.** None.

22 **K. RELIEF.** Cost-sharing and costs-allocation, expected to be by the Parties' agreement.

23 **L. SETTLEMENT AND ADR.** Continuance should assist this effort.

1 **M. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES.** Undecided.

2 **N. OTHER REFERENCES.** The present cooperation is successful.

3 **O. NARROWING OF ISSUES.** Cooperative work has effectively narrowed issues.

4 **P. EXPEDITED SCHEDULE.** The schedule has been expedited, despite a long time on docket.

5 **Q. SCHEDULING.** The Parties believe it is presently unnecessary to schedule litigation dates.

6 **R. TRIAL.** The Parties believe it will most likely be unnecessary to try this case.

7 **S. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS.** Done.

8 **T. OTHER MATTERS TO FACILITATE DISPOSITION.** None.

9 **U. IDENTIFICATION OF LEAD TRIAL COUNSEL** Karl R. Morthole hereby attests a full
10 report of status of the site was given to the Lead Trial Counsel for the Defendants below.

11 Karl R. Morthole, 57 Post Street, Suite 804, San Francisco, CA 94104, (415) 986-0227
12 [Plaintiffs Lead Trial Counsel]

13 Martin Deutsch, 440 North First Street, Suite 200, San Jose, CA 95112, 408-947-1760
14 [Parks Defendants and Cross-Complainants Lead Trial Counsel]

15 Thomas M. Downey, 1901 Harrison Street, 11th Floor, Oakland, CA 94612, 510-444-6800
16 [Perrys Defendants Lead Trial Counsel]

17 Geggory C. Brandt, 1111 Broadway, 24th Floor, Oakland, CA 94607-4036, 510-834-6600
18 [Dublin Town & Country Associates and William Kartoziyan Cross-Defendants Lead Trial Counsel]

19
20 Date: November 2, 2015

Respectfully submitted,

LAW OFFICES OF KARL R. MORTHOLE

By Karl R. Morthole

Karl R. Morthole

Lead Trial Counsel for Plaintiffs

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~~(PROPOSED)~~ ORDER

The Court finds that each party was represented by lead trial counsel responsible for trial of this matter and was given an opportunity to be heard as to all matters encompassed by this Plaintiffs' Updated Status/Case Management Statement and (Proposed) Order filed prior to the date of this conference. The Court adopts this statement as modified and enters it as the Order of this Court pursuant to Civ. L.R. 16-8(b).

The foregoing joint statement, as amended by setting the date for the next Status/Case Management Conference for May ²⁶, 2016, is adopted by this Court as the Case Management Order in this action in accordance with Civ. L.R. 16 and other applicable Local Rules, and shall govern all further proceedings in this action. An updated joint CMC statement shall be filed by May 19, 2016.

IT IS SO ORDERED.

Date: 11/4/15

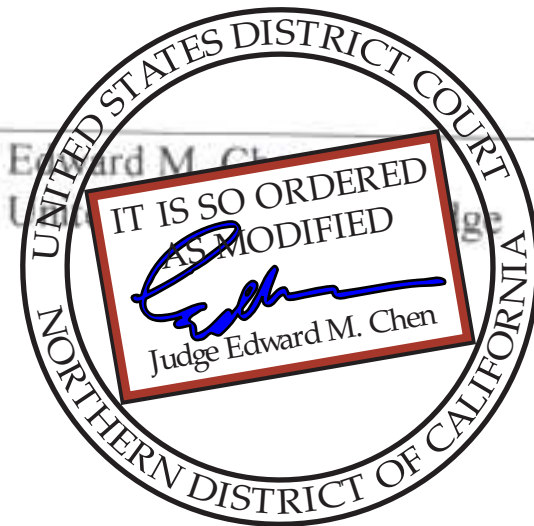


EXHIBIT A

1 KARL R. MORTHOLE (CA Bar #112565)
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3 57 Post Street
4 Suite 804
5 San Francisco, CA 94104
6 (415) 986-0227

7 Attorney for Plaintiffs
8 BRUCE A. BURROWS and
9 JAMES A. ROESSLER

10 UNITED STATES DISTRICT COURT
11
12 NORTHERN DISTRICT OF CALIFORNIA

13 BRUCE A. BURROWS and JAMES A.
14 ROESSLER,
15 Plaintiffs

16 v.

17 DWIGHT W. PERRY, CARLETON L.
18 PERRY, KWANG SUK LEE, KUI JA LEE,
19 NAM SUN PARK AND SEUNG HEE
20 PARK,

21 Defendants.

22 AND RELATED COUNTERCLAIMS AND
23 CROSSCLAIMS.

CASE NO. C 07-5354 EMC

VOLUNTARY JOINT
STIPULATION FOR DISMISSAL
WITHOUT PREJUDICE,
AND (PROPOSED) ORDER

DATE: November 9, 2015

TIME: 10:30 a.m.

PLACE: Crt #5, 17th Floor

24 Plaintiffs Bruce A. Burrows and James A. Roessler (the "Plaintiffs"), Defendants Dwight
25 W. Perry, Carlton L. Perry, Nam Sun Park and Seung Hee Park (the "Appearing Defendants"¹)
26 and Cross-Defendants Dublin Town & Country Associates and William Kartoian (the "Cross-
27 Defendants"²), hereafter collectively "the Parties," all by and through their attorneys, agree and
28 stipulate as follows:

¹ Defendants Kwang Suk Lee and Kui Ja Lee, though named in the Complaint, never appeared in this action.

² Counsel for Cross-Defendant Chiu Family Trust has passed away, his replacement has retired, and no further replacement counsel has yet appeared in the case.

EXHIBIT A

1 Pursuant to Fed. Rules Civ. Proc. Rule 41(a)(1)(A)(ii) and Rule 41(c), the Plaintiffs, the
2 Appearing Defendants and the Cross-Defendants, pursuant to this stipulation of dismissal signed on
3 behalf of all the Parties who have appeared, hereby voluntarily dismiss any and all claims, counter-
4 claims, and cross-claims in this action. Such voluntary dismissals shall be without prejudice, with
5 each of the Parties to bear its own costs and fees.
6

7 It is the express intention of all the Parties that the dismissals pursuant to this
8 stipulation will have no preclusive effect whatsoever on any future litigation that is based on the
9 alleged occurrence or recurrence of any claim, fact, or circumstance at issue in the present case
10 or related to the present case.
11

12 Each undersigned representative of the Parties certifies that he or she is fully authorized
13 to enter into and execute the terms and conditions of this Joint Stipulation of Dismissal.
14

15 _____ Date _____
16 Martin Deutsch, 440 North First Street, Suite 200, San Jose, CA 95112, 408-947-1760
17 [Parks Defendants and Cross-Complainants Lead Trial Counsel]

18 _____ Date _____
19 Thomas M. Downey, 1901 Harrison Street, 11th Floor, Oakland, CA 94612, 510-444-6800
20 [Perrys Defendants Lead Trial Counsel]

21 _____ Date _____
22 Gregory C. Brandt, 1111 Broadway, 24th Floor, Oakland, CA 94607-4036, 510-834-6600
23 [Dublin Town & Country Associates and William Kartoian Cross-Defendants Lead Trial Counsel]

24 Date: October __, 2015

Respectfully submitted,

LAW OFFICES OF KARL R. MORTHOLE

25 By _____
26 Karl R. Morthole
27 Lead Trial Counsel for Plaintiffs
28 Law Offices of Karl R. Morthole
57 Post Streetm Suite 804
San Francisco, CA 94104
(415) 986-0227; karl@mortholelaw.com

EXHIBIT A

(PROPOSED) ORDER

1
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3 The Court finds that each of the Parties was represented by lead trial counsel responsible
4 for trial of this matter and was given an opportunity to be heard as to all matters encompassed by
5 this Voluntary Joint Stipulation for Dismissal and (Proposed) Order filed prior to the date of this
6 Order. The Court adopts this statement as modified and enters it as the Order of this Court
7 pursuant to Civ. L.R. 16-8(b).
8

9 The foregoing joint stipulation is adopted by this Court as its Order in this action in
10 accordance with Civ. L.R. 16 and other applicable Local Rules, and this action is hereby dismissed
11 without prejudice.

12 IT IS SO ORDERED.

13 Date: _____

14 _____
15 Edward M. Chen,
16 United States District Judge
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1 KARL R. MORTHOLE (CA Bar #112565)
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7 Attorney for Plaintiffs
8 BRUCE A. BURROWS and JAMES A. ROESSLER

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 BRUCE A. BURROWS and JAMES A.
12 ROESSLER,
13 Plaintiffs

)
) CASE NO. C 07-5354 EMC
)

)
) CERTIFICATE OF SERVICE
)

14 DWIGHT W. PERRY, CARLETON L.
15 PERRY, KWANG SUK LEE, KUI JA LEE,
16 NAM SUN PARK AND SEUNG HEE
17 PARK,
18 Defendants.

19 I declare that on the date set forth below, I served the attached

20 **PLAINTIFFS' UPDATED STATUS/CASE MANAGEMENT STATEMENT,
21 AND (PROPOSED) ORDER**

22 by e-filing on all parties by their counsel so appearing.

23 I declare under penalty of perjury that the foregoing is true and correct and that this declaration
24 was executed on the date hereinafter set forth.

25 San Francisco, CA
26 Date: November 2, 2015

27 /s/ Karl R. Morthole
28 Karl R. Morthole