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 R.R. STREET & CO. INC.
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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

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|--|---|--|
| 12 KFD ENTERPRISES, INC., a California |) | No. 3:08-cv-04571-MMC |
| corporation dba Norman’s Dry Cleaner, |) | |
| 13 |) | |
| Plaintiff, |) | STIPULATION AND PROPOSED ORDER |
| 14 |) | WITH RESPECT TO DEFENDANT CITY |
| v. |) | OF EUREKA’S CLAIM FOR PUNITIVE |
| 15 |) | DAMAGES AGAINST DEFENDANT R.R. |
| CITY OF EUREKA, et al., |) | STREET & CO. INC. |
| 16 |) | [Civil L.R. 7-12] |
| Defendants, |) | |
| 17 |) | |
| 18 AND ALL RELATED CROSS-CLAIMS |) | |
| AND THIRD-PARTY CLAIMS. |) | |
| 19 _____) |) | |

20 Pursuant to Civil L.R. 7-12, Defendant City of Eureka (“Eureka”) and Defendant R.R.
 21 Street & Co. Inc. (“Street”) hereby stipulate and request judicial action as follows:

22 WHEREAS, Paragraph 92 of Eureka’s First Amended Complaint (Doc. 46, filed July 24,
 23 2009) alleges that “[i]n causing the public nuisance alleged herein, Defendants [including Street]
 24 acted with oppression, fraud or malice, and in wanton disregard of the health and safety of those
 25 impacted by its public nuisance, including Eureka”;

26 WHEREAS, in the absence of the stipulation herein, Street would move to strike Para-
 27 graph 92 pursuant to Federal Rule of Civil Procedure 12(f)(2), thereby delaying Street’s answer
 28 to Eureka’s complaint; and

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1 WHEREAS, avoiding such a motion and having Street answer Eureka's complaint would
2 promote the just, efficient, speedy, and economical determination of this action;

3 THEREFORE, Eureka and Street stipulate that

4 (1) Paragraph 92 of Eureka's First Amended Complaint is stricken as to Street;

5 (2) such striking shall be without prejudice to Eureka's right, following investigation
6 and discovery, to seek leave of this Court, pursuant to Federal Rule of Civil Procedure 15(a)(2),
7 to amend its operative complaint to assert a claim for punitive damages against Street; and

8 (3) so long as such motion is filed and heard consistent with the deadlines imposed by
9 this Court for the filing and hearing of pretrial motions, Street shall not oppose Eureka's motion
10 on the basis of untimeliness or waiver or similar doctrine.

11 Dated: September 3, 2009.

12 Respectfully submitted,

13 /s/ Eric Grant
14 Eric Grant
Hicks Thomas LLP

15 Counsel for Defendant
16 R.R. STREET & CO. INC.

17 (The filer hereby attests that concurrence in
18 the filing of this document has been obtained
19 from the signatory below.)

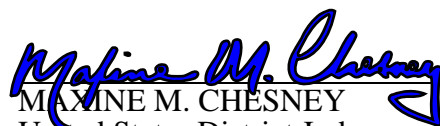
20 DAVIDOVITZ & BENNETT LLP

21 /s/ Charles Bolcom
22 MORIS DAVIDOVITZ
23 CHARLES BOLCOM

24 Attorneys for Defendant, Counter-Complainant,
25 and Third-Party Plaintiff CITY OF EUREKA

26 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

27 Dated: September 8, 2009

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MAXINE M. CHESNEY
United States District Judge