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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KFD ENTERPRISES, INC., a California Corporation dba Norman’s Dry Cleaners,

Plaintiff,

v.

CITY OF EUREKA,

Defendant

No. C-08-4571 MMC

**ORDER STRIKING CITY OF EUREKA’S
FOURTH AMENDED COUNTER-CLAIM
AND CROSS-CLAIM FILED OCTOBER
15, 2010; STRIKING ANSWERS
THERE TO; DENYING MOTION TO
DISMISS AS MOOT**

Before the Court is the City of Eureka’s (“the City”) Fourth Amended Counter-Claim and Cross-Claim (“4ACC”), filed October 15, 2010. As the City had not moved for leave to file the 4ACC, the Court ordered the City to show cause why such filing should not be stricken, and afforded the other parties the opportunity to respond to the City’s showing. On November 5, 2010, the City responded, explaining that as a result of information the City had obtained, it seeks to add two entities as third-party defendants and to add new facts to support its allegations against third-party defendant Kenneth Daer; additionally, the City seeks to amend its allegations in general to clarify that it is not seeking affirmative relief in the form of damages. On November 11, 2010, Multimatic LLC and the Kirrberg Corporation responded, requesting only that they be afforded additional time to respond to the 4ACC should the Court decide not to strike said pleading. On November 12, 2010, Firbimatic SpA and RR Street & Co. Inc. responded, noting the Court’s orders filed that

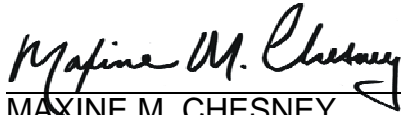
1 same date had granted in part, and with leave to amend, two motions to dismiss Eureka's
2 Third Amended Counter-Claim and Cross-Claim, and requesting that "the City's pending
3 pleading . . . be bypassed in favor of the amended pleading that the City has been
4 authorized to file on or before December 10, 2010." (See Doc. No. 338 at 2:10-12.) The
5 Court agrees with Firbimatic and RR Street that "judicial economy would be served" (see
6 id.) by the City's filing a single amended pleading in accordance with the Court's recent
7 orders.

8 Accordingly, the 4ACC filed October 15, 2010 is hereby STRICKEN, without
9 prejudice to the City's filing a Fourth Amended Counter-Claim and Cross-Claim in
10 accordance with the Court's orders of November 12, 2010. Additionally, if the City elects to
11 file a renewed Fourth Amended Counter-Claim and Cross-Claim, the City may allege
12 therein claims against the new parties identified in the stricken 4ACC, specifically, MBL,
13 Inc. and Hoyt Corporation, and may allege new facts to support its allegations against third-
14 party defendant Kenneth Daer as well as clarify its pleadings as to the form of relief it
15 seeks.

16 In light of the above, all answers to the 4ACC are hereby STRICKEN, and third-party
17 defendant Kenneth Daer's motion, filed November 1, 2010, to dismiss the fourth through
18 eighth claims for relief from the City of Eureka's 4ACC is hereby DENIED as moot.

19 **IT IS SO ORDERED.**

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21 Dated: November 17, 2010



MAXINE M. CHESNEY
United States District Judge

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