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Counter Defendant and Counter Claimant KFD Enterprises, Inc.,
a California corporation dba Norman's Dry Cleaner, and
Third Party Defendant Kenneth Daer

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

KFD ENTERPRISES, INC., a
California corporation dba Norman's Dry
Cleaner,

Plaintiff,

vs.

CITY OF EUREKA, et al.

Defendants.

AND RELATED COUNTER AND CROSS
CLAIMS

Case No.: 3:08-CV-04571 MMC

**SECOND AMENDED STIPULATION TO
CONTINUE ALL PENDING COURT
DATES; DECLARATION OF TIMOTHY
GALLAGHER; ~~[PROPOSED]~~ ORDER**

1 **IT IS HEREBY STIPULATED** by and between Plaintiff KFD Enterprises, Inc. (“KFD”),
2 Cross-Defendant Kenneth Daer, Defendant, Cross-Claimant, Counter-Claimant, and Cross-
3 Defendant City of Eureka, Defendant, Cross-Defendant, and Cross-Claimant Winzler & Kelly,
4 Defendants and Cross-Defendants Union Oil Company of California, Unocal Corporation, and
5 Chevron Corporation (“Union Oil entities”), Defendant, Cross-Defendant, and Cross-Claimant
6 Environmental Resolutions, Inc./Cardno USA (“ERI/Cardno”), and Defendants and Cross-
7 Defendants Multimatic LLC and the Kirrberg Corporation (“Multimatic Entities”) as follows:

8 **RECITALS**

- 9 1. This stipulation is entered into between the parties to continue all pending court dates¹ for
10 approximately three (3) months to allow the parties to pursue settlement negotiations that
11 have commenced and continue before private mediator Timothy Gallagher.
- 12 2. On October 1, 2008, the Complaint was filed in this action, seeking relief under CERCLA
13 and pendent state claims. Numerous cross and counter claims followed.
- 14 3. The action arises out of solvent and petroleum contamination in Eureka, California. The
15 issues of liability and allocation are complex, and the claimed damages approach \$10
16 million.
- 17 4. The parties commenced their initial mediation on October 4, 2012 with Mr. Gallagher. Mr.
18 Gallagher has determined that it would be appropriate for the parties to continue all pending
19 court dates while he determines if the case can be resolved. Mr. Gallagher has determined
20 that a resolution might be possible but requires additional information concerning the extent
21 of contamination and its costs to correct, as well as related insurance coverage and allocation
22 issues. To this end, Mr. Gallagher has scheduled the following subsequent mediation dates:
- 23 a. October 16, 2012: Meeting with City of Eureka insurers
- 24 b. October 18, 2012: Meeting with KFD insurers
- 25 c. October 19, 2012: Meeting with City of Eureka consultants
- 26 d. October 22, 2012: Meeting with KFD consultants

27 _____
28 ¹ The mediator has indicated a preference to keep the pending dispositive motions on calendar. ERI/Cardno concurs with
this assessment. Thus, this stipulation does not affect pending motions for summary judgment currently scheduled for
hearing on November 16, 2012, and which are pursued by the Multimatic entities and ERI/Cardno.

1 e. November 9, 2012: Meeting with all parties

2 f. November 27, 2012: Meeting with all parties

3 g. December 20, 2012: Meeting with all parties

4 5. This 90-day period will give the parties the best opportunity to resolve complex, technical,
5 and remediation cost issues that have prevented settlement.

6 **STIPULATION**

7 **NOW THEREFORE**, the parties stipulate and agree, subject to Court approval, as follows:

8 A. The last day to complete expert discovery is hereby continued from November 16, 2012 to
9 February 15, 2013.

10 B. The deadline to file motions to compel expert discovery is hereby continued from November
11 23, 2012 to February 22, 2013.

12 C. The deadline to file dispositive motions is hereby continued from November 30, 2012 to
13 March 1, 2013.

14 D. The Case Management Conference is hereby continued from December 21, 2012 to March
15 22, 2013.

16 E. The deadline for hearing on dispositive motions is hereby continued from January 11, 2013
17 to April 12, 2013.

18 F. The deadline for lead counsel to meet and confer for Pretrial Conference purposes is hereby
19 continued from January 22, 2013 to April 22, 2013.

20 G. The deadline for jury instructions, voir dire and verdict forms, exhibit exchange with other
21 parties, and motions in limine is hereby continued from February 11, 2013 to May 3, 2013.

22 H. The Joint Pretrial Conference Statement filing deadline is hereby continued from February
23 19, 2013 to May 13, 2013.

24 I. The deadline for filing oppositions to motions in limine is hereby continued from February
25 19, 2013 to May 13, 2013.

26 J. The deadline for filing exhibits lists with stipulations and objections is hereby continued
27 from February 25, 2013 to May 17, 2013.

28 K. The Pretrial Conference is hereby continued from February 26, 2013 to June 4, 2013.

1 L. The Trial is hereby continued from March 11, 2013 to June 10, 2013.²

2
3 The parties also request a conference call with Court should the Court deem it necessary to
4 discuss the proposed dates.

5
6 Dated: October 12, 2012

GREBEN & ASSOCIATES

7
8 /s/ Jan A. Greben

JAN A. GREBEN

JEFF COYNER

9 Plaintiff, Cross Defendant, Third Party Defendant,
10 Counter Claimant KFD ENTERPRISES INC., a
California corporation dba Norman's Dry Cleaner; and
11 Third Party Defendant KENNETH DAER

12 Dated: October 12, 2012

GORDON & REES, LLP

13
14 /s/ George A. Acero

KRISTIN N. REYNA

GEORGE A. ACERO

15 Defendant and Third Party Defendant
16 ENVIRONMENTAL RESOLUTIONS, INC.

17 Dated: October 12, 2012

DAVIDOVITZ & BENNETT LLP

18
19 /s/ Charles Bolcom

MORIS DAVIDOVITZ

CHARLES BOLCOM

20 Defendant, Third Party Plaintiff, Counterclaimant
21 CITY OF EUREKA

22 Dated: October 12, 2012

GLYNN & FINLEY LLP

23
24 /s/ Andrew T. Mortl

ANDREW T. MORTL

MORGAN LOPEZ

25 Attorneys for Defendants and Cross-Defendants
26 UNION OIL CO. OF CALIFORNIA, UNOCAL
27 CORP. AND CHEVRON CORP.

28 ² Counsel for ERI has a trial on July 15, 2013. The parties have advised that this trial can be tried within 3-4 weeks.
Based on this understanding, ERI consents to continuing the trial to June 10, 2013.

1 Dated: October 12, 2012

SEVERSON & WERSON PC

2
3 /s/ Peter C. Lyon

PETER C. LYON

4 NANNETTE DE LARA

5 Attorneys for Defendant, Cross-Defendant, and Cross-
Claimant WINZLER & KELLY

6
7 Dated: October 12, 2012

DONGELL LAWRENCE FINNEY LLP

8
9 /s/ Thomas F. Vandenburg

10 THOMAS F. VANDENBURG

11 CHRISTOPHER W. SMITH

12 Attorneys for Defendants and Cross-Defendants
MULTIMATIC LLC and THE KIRRBURG
CORPORATION

DECLARATION OF TIMOTHY GALLAGHER

I, TIMOTHY GALLAGHER, hereby declare and state:

1. I am an attorney at law duly licensed to practice before the United States District Court for the Northern District of California, and I am a partner in the law firm of Gallagher and Gallagher, a Professional Corporation, and acting as mediator in the above-reference action.
2. On October 4, 2012, the parties, including their insurance carriers, participated in a mediation with me in San Francisco. Existing information concerning contamination and potential liability was presented. Each party and the insurance carriers were provided an opportunity to present their information confidentially to me. I determined that a resolution was possible but required additional information concerning the extent of contamination and its cost to remediate. I also determined that both an allocation of each party's liability as well as establishing the respective insurer's potential duty to their insureds was necessary.
3. The parties have scheduled additional mediation dates with me on October 16, 18, 19, 22, November 9 and 27, and December 20. These mediation sessions will involve discussions of environmental conditions, identification of incidents when contaminants were released into the environment, identification of additional insurers, analysis of future environmental assessment and remediation potential costs, allocation evaluations and discussions on potential resolutions methods and terms.
4. The parties are hopeful that they can continue their mediation without incurring additional pre-trial costs. The parties desire to continue all pending court dates, including the trial, for a period of approximately three (3) months.
5. Over the next three months, I intend to determine a path forward that will identify the extent of contamination to my satisfaction, allocate liability and determine the level of involvement necessary from each of the identified insurance carriers of the respective parties. Because of the complexity of the issues associated with the environmental data as well as the

1 involvement of the insurance carriers and the length of time normally required for final
2 approval and any settlement and final determination of any insurance coverage issues, at the
3 conclusion of the three months, it is my expectation that a written and execute agreement in
4 principle will have been reached. The agreement in principle would be subject to a
5 finalization of the terms and conditions among the parties as well as final approval from the
6 insurance carriers involved in funding the remedial measures.

7
8 6. I respectfully submit that, based on the foregoing, good cause exists to approve the instant
9 Stipulation inasmuch as the parties have been working diligently with regard to conducting
10 site investigations and conducting and responding to discovery and have likewise been
11 working diligently in an effort to resolve this matter without the parties incurring additional
12 fees in further litigation.

13 7. I respectfully request the Court to continue the pending court dates for a period of
14 approximately three months because it will allow the parties to avoid additional, significant
15 attorneys' fees and will foster the parties' ability to potentially resolve this matter and fund
16 the necessary environmental remediation.
17


18
19 I DECLARE, UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED
20 STATES OF AMERICA, THAT THE FOREGOING IS TRUE AND CORRECT.

21 Executed this 12th day of October, 2012 at Los Angeles, California
22

23
24 /s/ Timothy Gallagher
25 TIMOTHY GALLAGHER, Declarant
26
27
28

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED**, with the exception that the deadline for
2 hearing on dispositive motions is hereby CONTINUED to April 5, 2013, and the Pretrial
Conference is hereby CONTINUED to May 28, 2013.

3 DATED: October 16, 2012


MAXINE M. CHESNEY
UNITED STATES DISTRICT JUDGE