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Attorneys for Plaintiff, Cross Defendant, Third Party Defendant,
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.

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

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

AND RELATED COUNTER AND CROSS
CLAIMS

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 dates for
10 approximately three (3) months to allow the parties to continue to pursue settlement
11 negotiations that 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 mediation on October 4, 2012, with Mr. Gallagher. Mr.
18 Gallagher has since held three in-person mediations, the last of which occurred on December
19 20, 2012. Mr. Gallagher has determined that a resolution may be possible but requires
20 additional time to resolve related insurance issues, the expected cost of remediation, and
21 related allocation issues. Recent summary judgment decisions by the Court and continued
22 insurance company negotiations will require further time to attempt resolution. To this end,
23 Mr. Gallagher requests, and the parties stipulate, for a further three-month postponement of
24 all pending court dates.
- 25 5. This 90-day period will give the parties the best opportunity to resolve complex, technical,
26 and remediation cost issues that have prevented settlement.

27 **STIPULATION**

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

- 1 A. The last day to complete expert discovery is hereby continued from February 15, 2013 to
2 May 17, 2013.
- 3 B. The deadline to file motions to compel expert discovery is hereby continued from February
4 22, 2013 to May 24, 2013.
- 5 C. The deadline to file dispositive motions is hereby continued from March 1, 2013 to June 7,
6 2013.
- 7 D. The Case Management Conference is hereby continued from March 22, 2013 to June 21,
8 2013.
- 9 E. The deadline for hearing on dispositive motions is hereby continued from April 5, 2013 to
10 July 19, 2013.
- 11 F. The deadline for lead counsel to meet and confer for Pretrial Conference purposes is hereby
12 continued from April 22, 2013 to July 26, 2013.
- 13 G. The deadline for jury instructions, voir dire and verdict forms, exhibit exchange with other
14 parties, and motions in limine is hereby continued from May 3, 2013 to August 9, 2013.
- 15 H. The Joint Pretrial Conference Statement filing deadline is hereby continued from May 13,
16 2013 to August 23, 2013.
- 17 I. The deadline for filing oppositions to motions in limine is hereby continued from May 13,
18 2013 to August 23, 2013.
- 19 J. The deadline for filing exhibits lists with stipulations and objections is hereby continued
20 from May 17, 2013 to August 23, 2013.
- 21 K. The Pretrial Conference is hereby continued from May 28, 2013 to September 3, 2013.
- 22 L. The Trial is hereby continued from June 10, 2013 to September 9, 2013.

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24 The parties also request a conference call with Court should the Court deem it necessary to
25 discuss the proposed dates.
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28

1 Dated: January 2, 2013

GREBEN & ASSOCIATES

2
3 /s/ Jan A. Greben

JAN A. GREBEN

BRETT A. BOON

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

7 Dated: January 2, 2013

GORDON & REES, LLP

8
9 /s/ George A. Acero

KRISTIN N. REYNA

GEORGE A. ACERO

10 Defendant and Third Party Defendant
11 ENVIRONMENTAL RESOLUTIONS, INC.

12 Dated: January 2, 2013

DAVIDOVITZ & BENNETT LLP

13
14 /s/ Charles Bolcom

MORIS DAVIDOVITZ

CHARLES BOLCOM

15 Defendant, Third Party Plaintiff, Counterclaimant
16 CITY OF EUREKA

17 Dated: January 2, 2013

GLYNN & FINLEY LLP

18
19 /s/ Andrew T. Mortl

ANDREW T. MORTL

MORGAN LOPEZ

20 Attorneys for Defendants and Cross-Defendants
21 UNION OIL CO. OF CALIFORNIA, UNOCAL
22 CORP. AND CHEVRON CORP.

23 Dated: January 2, 2013

SEVERSON & WERSON PC

24
25 /s/ Peter C. Lyon

PETER C. LYON

NANNETTE DE LARA

26 Attorneys for Defendant, Cross-Defendant, and Cross-
27 Claimant WINZLER & KELLY
28

1 Dated: January 2, 2013

DONGELL LAWRENCE FINNEY LLP

2 /s/ Thomas F. Vandenburg

3 THOMAS F. VANDENBURG

4 Attorneys for Defendants and Cross-Defendants

MULTIMATIC LLC and THE KIRRBURG

5 CORPORATION

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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 participated in three separate mediations with me through December 20, 2012. These sessions involved 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. Recent summary judgment decisions issued by this Court will require further time to determine if settlement can be reached with parties affected by the denial of these motions. Because of the

1 complexity of the issues associated with the environmental data as well as the involvement of
2 the insurance carriers and the length of time normally required for final approval and any
3 settlement and final determination of any insurance coverage issues, at the conclusion of the
4 three months, it is my expectation that a written and execute agreement in principle will have
5 been reached. The agreement in principle would be subject to a finalization of the terms and
6 conditions among the parties as well as final approval from the insurance carriers involved in
7 funding the remedial measures.
8

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

14 7. I respectfully request the Court to continue the pending court dates for another period of
15 approximately three months because it will allow the parties to avoid additional, significant
16 attorneys' fees and will foster the parties' ability to potentially resolve this matter and fund
17 the necessary environmental remediation.
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19
20 I DECLARE, UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED
21 STATES OF AMERICA, THAT THE FOREGOING IS TRUE AND CORRECT.

22 Executed this 28th day of December, 2012, at Los Angeles, California
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24
25 /s/ Timothy Gallagher
26 TIMOTHY GALLAGHER, Declarant
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1 **PURSUANT TO STIPULATION, IT IS SO ORDERED** with the exception that the deadline for
2 filing the Joint Pretrial Conference Statement is continued to August 13, 2013, the deadline for filing
3 oppositions to motions in limine is continued to August 20, 2013, and the Pretrial Conference is
4 continued to August 27, 2013.

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DATED: January 4, 2013



MAXINE M. CHESNEY
UNITED STATES DISTRICT JUDGE