

United States District Court
For the Northern District of California

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

KFD ENTERPRISES, INC.,)	Case No. 08-04571-SC
)	
Plaintiff,)	ORDER RE: MOTIONS FOR
)	DETERMINATION OF GOOD FAITH
v.)	<u>SETTLEMENT</u>
)	
CITY OF EUREKA, et al.)	
)	
Defendants.)	
)	
AND RELATED COUNTER AND CROSS)	
CLAIMS)	
)	
)	

I. INTRODUCTION

Plaintiff KFD Enterprises, Inc. ("KFD") brings this action against a number of parties seeking contribution for contamination of a property located at 2907 E Street, Eureka, California (the "Property"). KFD recently reached a settlement with Environmental Resolutions, Inc. and Cardno USA, Inc. (collectively "ERI"), as well as Multimatic LLC and the Kirreberg Corporation (collectively, "Multimatic"). ERI and Multimatic now move for approval of their respective settlement agreements. ECF No. 620 ("ERI Mot."), 621

1 ("Multimatic Mot."). Defendant City of Eureka ("Eureka") opposes
2 both motions. ECF Nos. 626 ("Opp'n to ERI Mot."), 630 ("Opp'n to
3 Multimatic Mot.").¹ This matter is appropriate for resolution
4 without oral argument per Civil Local Rule 7-1(b). For the reasons
5 set for the below, Multimatic's motion is GRANTED and ERI's motion
6 is GRANTED in part and DENIED in part.

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8 **II. BACKGROUND**

9 KFD commenced dry cleaning operations on the Property, which
10 included use of PCE, on or about 1980. During this time, KFD used
11 Multimatic's dry cleaning equipment. On or about 1998, petroleum
12 hydrocarbon and volatile organic compound contamination was
13 discovered on the Property, primarily PCE and TCE. Union Oil,
14 which owned the Property from 1964 through 1979, investigated the
15 contamination and hired ERI to install monitoring wells on the
16 Property.

17 In or around 2008, KFD brought suit against several parties,
18 including Eureka, as well as Union Oil, Unocal, and Chevron
19 (collectively, "Union Oil"), alleging that they had contributed to
20 the contamination on the Property. Among other things, KFD has
21 asserted state law claims and claims under the federal
22 Comprehensive Environmental Response, Compensation, and Liability
23 Act ("CERCLA"), 42 U.S.C. § 9601 et seq.

24 ERI was brought into the action via a third-party complaint,
25 and KFD later named ERI as a direct defendant in the case. KFD
26 alleges that ERI's monitoring wells contributed to the

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28 ¹ The movants have filed replies in support of their motions. ECF
Nos. 628 ("Reply ISO ERI Mot."), 633 ("Reply ISO Multimatic Mot.").

1 contamination on the Property, and that ERI was acting as Union
2 Oil's agent when it installed the monitoring wells. Eureka has
3 also filed a cross-complaint against Union Oil. KFD also sued
4 Multimatic, alleging that its dry cleaning equipment contributed to
5 the contamination on the Property.

6 KFD and ERI reached a settlement agreement on or around June
7 6, 2013. The key terms of the settlement are as follows: ERI will
8 pay KFD \$450,000 in exchange for a release of all claims by KFD
9 arising out of or related to the action, or related to the
10 monitoring wells installed by ERI at the Property. This includes a
11 release of KFD's claims against Union Oil relating to the
12 monitoring wells installed by ERI, but not ERI's other claims
13 against Union Oil. ERI will execute a mutual release in favor of
14 KFD. KFD will provide indemnity to ERI and hold it harmless from
15 any third-party claims relating to its claims against ERI in the
16 instant action. This indemnity extends to Union Oil as to the
17 claims relating to the monitoring wells installed by ERI. Under
18 the settlement agreement, KFD and ERI shall bear their own costs
19 and attorney's fees.

20 On or around May 7, 2013, KFD also reached a settlement
21 agreement with Multimatic. The key terms of that settlement are as
22 follows: Multimatic will pay KFD \$650,000. KFD will release and
23 forever discharge Multimatic from any and all claims, whether known
24 or unknown. KFD will dismiss its lawsuit against Multimatic with
25 prejudice. The settling parties have agreed to bear their
26 respective costs and attorney fees.

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1 **III. DISCUSSION**

2 ERI and Multimatic now move for approval of their settlements
3 with KFD. Non-settling Defendant Eureka objects to the proposed
4 settlements on two grounds: (1) to the extent the settlements are
5 governed by state law, Eureka contends that they are not in good
6 faith, and (2) Eureka contends that ERI's settlement with KFD
7 should not affect Eureka's cross-complaint against Union Oil.

8 **A. Choice of Law**

9 Eureka asks the Court to determine whether state or federal
10 law applies to the settlements. If state law applies, Eureka
11 argues that the Court should reject the settlements because they
12 violate section 877(a) of the California Code of Civil Procedure,
13 which provides that any settlement shall reduce the claims against
14 other non-settling defendants in the amount stipulated by the
15 settlement, or in the amount of consideration paid for it,
16 whichever is greater. Eureka contends that ERI and Multimatic have
17 not attempted to provide a credit to non-settling defendants.
18 Eureka also contends that the settlements are far too low in light
19 of ERI and Multimatic's role in the alleged contamination, and as a
20 result, Eureka's potential liability will be disproportionately
21 increased.

22 ERI and Multimatic argue that Eureka's concerns are misplaced
23 because their settlements with KFD are governed not by section 877,
24 but by federal common law and the proportionate share principles of
25 the Uniform Comparative Fault Act ("UCFA"). Under the UCFA, "the
26 claim of the releasing person against other persons is reduced by
27 the amount of the released person's equitable share of the
28 obligation." UCFA § 6. Thus, each defendant is liable for its

1 equitable share of the total liability, regardless of the
2 settlements by other defendants.

3 The Court finds that the claims at issue are governed by the
4 proportionate share approach of the UCFA. None of the parties
5 appears to object to this approach. Moreover, federal courts in
6 California have repeatedly adopted the UCFA approach in other
7 multi-party CERCLA cases, including those which also involved
8 pendant state law claims. See, e.g., AmeriPride Servs. v. Valley
9 Indus. Servs., Case No. CIV. S-00-113-LKK JFM, 2007 U.S. Dist.
10 LEXIS 51364, at *10-11 (E.D. Cal. July 2, 2007); City of Oakland v.
11 Keep on Trucking Co., Case No. C-95-03721-CRB, 1998 U.S. Dist.
12 LEXIS 20213, at *12 (N.D. Cal. Dec. 21, 1998).

13 Since the effect of settlement agreements is governed by
14 federal law, Eureka's state law objections to the settlements are
15 OVERRULED.

16 **B. Union Oil**

17 The KFD-ERI settlement also resolves claims asserted against
18 Union Oil as they relate to monitoring wells installed by ERI:
19 "Releasors further do hereby and forever release and discharge
20 Union Oil . . . from all Claims relating to the monitoring wells at
21 the Property installed by ERI . . ." Reyna Decl. Ex. H. Eureka
22 argues that the KFD-ERI settlement cannot resolve Eureka's cross-
23 complaint against Union Oil because neither Eureka nor Union Oil
24 were parties to the settlement, and KFD has no standing to release
25 Eureka's claims.

26 ERI responds that "all indemnity and contribution claims
27 involving the ERI monitoring wells should be barred, because to do
28 less, would render the settlement not completely approved and would

1 not result in a full claims bar." Reply at 3. This argument is
2 predicated on the unfounded assumption that the Court is obligated
3 to approve a complete settlement. Moreover, ERI has yet to address
4 Eureka's argument that the settling parties lack standing to
5 dismiss Eureka's claims against Union Oil.

6 ERI further argues that because the UCFA applies to the
7 settlement, KFD, not Eureka, bears the risk from any perceived
8 underpayment under the settlement. The Court is not convinced. It
9 is entirely possible that the proposed ERI-KFD settlement could
10 prejudice Eureka's right to seek indemnification or contribution
11 from Union Oil with respect to one or more of the other claims or
12 cross-claims filed against Eureka in this matter. Without further
13 explanation, the Court declines to allow ERI and KFD to
14 unilaterally dismiss Eureka's claims against Union Oil. If, as ERI
15 represents, application of the UCFA will protect Eureka from any
16 potential underpayments, then ERI, KFD, and Eureka should have no
17 difficulty reaching a settlement on this issue.

18 Accordingly, the Court finds that ERI and KFD's settlement
19 does not affect Eureka's claims as they pertain to Union Oil.

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21 **IV. CONCLUSION**

22 For the foregoing reasons, Multimatic's motion is GRANTED.
23 The settlement agreement between KFD and Multimatic is approved
24 under the applicable federal and state laws. The provisions of the
25 UCFA apply with respect to the effect of the KFD-Multimatic
26 settlement as to both federal and state law claims. All claims
27 asserted in this action by KFD against Multimatic are hereby
28 DISMISSED with prejudice. All claims against Multimatic relating

1 to the facts of this action, including, but not limited to,
2 contribution and indemnity claims that have been or could have
3 been, asserted by any person or entity, in this action or
4 otherwise, whether such claims are or could be brought pursuant to
5 federal or state law, are hereby BARRED. All pending cross-claims
6 against Multimatic in this action are hereby DISMISSED with
7 prejudice.

8 ERI's motion is GRANTED in part and DENIED in part. If KFD
9 and ERI still wish to proceed with their settlement, they shall
10 submit a proposed order consistent with the guidance set forth
11 above. The proposed order shall be filed via the Court's
12 electronic filing system within ten (10) days of the signature date
13 of this Order.

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15 IT IS SO ORDERED.

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17 November 6, 2013

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UNITED STATES DISTRICT JUDGE

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