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11 LINES INSURANCE COMPANY

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO

15 SIERRA BAY CONTRACTORS, INC.,
16 A California Corporation,

17 Plaintiff,

18 vs.

19 WESTCHESTER SURPLUS LINES
20 INSURANCE COMPANY, a Georgia
21 corporation, and DOES 1 through 50,
22 inclusive,

23 Defendants.

CASE NO.: 3:10-cv-04611-RS

~~[PROPOSED]~~ ORDER GRANTING
DEFENDANT, WESTCHESTER SURPLUS
LINES INSURANCE COMPANY, LEAVE
TO FILE A FIRST AMENDED THIRD-
PARTY COMPLAINT

Judge: Honorable Richard Seeborg

24 Counsel for Defendant, Westchester Surplus Lines Insurance Company

25 (“WESTCHESTER”), submitted to this Court the “Stipulated Request That Defendant,

26 Westchester Surplus Lines Insurance Company, Be Granted Leave To File A First Amended

27 Third-Party Complaint Pursuant to F.R.C.P. 14” (the “Stipulated Request”).

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1 As set forth in the Stipulated Request, it is plaintiff, Sierra Bay Contractors, Inc.'s
2 ("SIERRA BAY"), contention in this action that WESTCHESTER has a duty to defend and
3 indemnify SIERRA BAY against the claims and demands being asserted against SIERRA BAY in
4 two ongoing underlying actions (the "Underlying Actions"). Furthermore, it is WESTCHESTER's
5 contention that certain insurance carriers have a duty to defend SIERRA BAY in the Underlying
6 Actions as their additional insured. More specifically, it is WESTCHESTER's contention that each
7 said insurance carrier is or may be liable to WESTCHESTER for all or part of SIERRA BAY's
8 claims against WESTCHESTER in this action.

9 On March 21, 2011, pursuant to WESTCHESTER's stipulated request, this Court granted
10 WESTCHESTER leave to file the "Westchester Surplus Lines Insurance Company's Third-Party
11 Complaint For: (1) Declaratory Relief; (2) Equitable Contribution; and (3) Equitable Subrogation"
12 pursuant to Federal Rule of Civil Procedure 14 as to those insurance carriers whom
13 WESTCHESTER contends have a duty to defend SIERRA BAY in the Underlying Actions as their
14 additional insured.

15 WESTCHESTER now seeks leave to file the "Westchester Surplus Lines Insurance
16 Company's First Amended Third-Party Complaint For: (1) Declaratory Relief; (2) Equitable
17 Contribution; and (3) Equitable Subrogation" (the "WESTCHESTER First Amended Third-Party
18 Complaint") pursuant to Federal Rule of Civil Procedure 14 as to those insurance carriers whom
19 WESTCHESTER contends have a duty to defend SIERRA BAY in the Underlying Actions as
20 their additional insured.

21 As set forth in the Stipulated Request, since this Court's March 21, 2011 Order,
22 WESTCHESTER contends that it has been provided documentation and other information from
23 counsel in the Underlying Actions pursuant to which WESTCHESTER believes two further
24 insurance carriers have an additional insuring obligation to SIERRA BAY in the Underlying
25 Actions, and two already named third party defendants have such an insuring obligation to SIERRA
26 BAY under additional policies, and that all said insurers are or may be liable to WESTCHESTER
27 for all or part of SIERRA BAY's claims against WESTCHESTER in this action. WESTCHESTER
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1 further seeks leave to file the WESTCHESTER First Amended Third-Party Complaint so as to name
2 the correct corporate entity and effect service upon four third-party defendants whose corporate
3 name has changed due to succession, merger or assignment.

4 After consideration of the Stipulated Request and the proposed WESTCHESTER First
5 Amended Third-Party Complaint attached as exhibit "A" thereto, the Court orders as follows:

6 WESTCHESTER is hereby granted leave pursuant to Federal Rule of Civil Procedure 14
7 to file the "Westchester Surplus Lines Insurance Company's First Amended Third-Party
8 Complaint For: (1) Declaratory Relief; (2) Equitable Contribution; and (3) Equitable
9 Subrogation" attached as exhibit "A" to the Stipulated Request.

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11 **IT IS SO ORDERED.**

12
13 Date: 4/22, 2011

By:



HONORABLE RICHARD SEEBORG
United States Judge
United States District Court, Northern
District of California