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5 Attorneys for Cross-Defendant ISCO INDUSTRIES, LLC

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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

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11 ISCO INDUSTRIES,)	CASE NO. 4:06-CV-07082-CW
)	
12 Plaintiff,)	JOINT SUPPLEMENTAL CASE
)	MANAGEMENT STATEMENT AND
13 v.)	[PROPOSED] ORDER
)	
14 NORTH BAY CONSTRUCTION, INC., et al.,)	DATE: December 9, 2008
)	TIME: 2:00 p.m.
15 Defendants.)	PLACE: Courtroom 2, 4th Floor
)	1301 Clay Street
)	Oakland, CA 94612
16 _____)	
17 and RELATED CROSS-ACTION.)	

18 Pursuant to Civil L.R. 16-149d), that parties to the above-entitled action certify that they
 19 met and conferred at least ten (10) days prior to the subsequent case management conference
 20 scheduled in this case and jointly submit this Supplemental Case Management Statement and
 21 Proposed Order and request the Court to adopt it as a Supplemental Case Management Order in
 22 this case.

23 DESCRIPTION OF SUBSEQUENT CASE DEVELOPMENTS

24 1. The following progress or changes have occurred since the last case management
 25 statement filed by the parties:

26 Pursuant to Order of this Court signed January 8, 2008, the Court ordered that (1) the
 27 parties are ordered to arbitrate this matter pursuant to the terms from North Bay Construction's
 28 ("NBC") Purchase Order 3102, attached as Exhibit D to the Declaration of Steve Geney in Support

1 of NBC's Motion to Compel, (2) this action shall be stayed until completion of the arbitration
2 proceedings, and (3) before engaging in arbitration, the parties shall first make a good-faith effort
3 to mediate the matter before a private mediator agreed upon by the parties. The following
4 discussion is not intended to be a waiver of any mediation privileges, but is intended to
5 communicate to the Court what has happened since January 8, 2008.

6 Since that time, North Bay Construction, Inc. and ISCO Industries, LLC have engaged in
7 an ongoing mediation with mediator Bruce Edwards, Esq. This has been an extended process with
8 the following steps. Mr. Edwards obtained the consent of the County of Sonoma and Wnzler and
9 Kelly to participate in the mediation. For background, this project involves a pipeline owned by
10 the County and designed by Winzler and Kelly. It is intended to carry leachate from a landfill to a
11 transfer station. It has never been operational. NBC contends that issues regarding the pipeline
12 involve its design. It was imperative, for any chance of mediated success, for the County and
13 Winzler and Kelly to participate. After Mr. Edwards obtained their participation, experts for the
14 parties worked on a testing protocol, with the objective being getting the pipeline into operation.
15 Given the scientific and technical issues this situation presents, this work has required multiple
16 meetings, reports, and an in person meeting where experts and others traveled from all over the
17 country for a meeting at the North Bay facility and an all-day expert meeting at JAMS in San
18 Francisco. Recently, Mr. Edwards made a mediator's proposal regarding funding testing and
19 repair. The proposal is still being evaluated by all the parties and if accepted work on the project
20 will commence shortly, and the parties will continue with mediation. It is not anticipated that
21 fruitful damages conversations can occur until the pipeline is operational. One reason is that the
22 County claims large, and growing, damages as a result of the pipeline not being operational. It is
23 paying to truck leachate, as opposed to using the pipeline for transport. North Bay and ISCO are
24 communicating with mediator Edwards and should know shortly if the mediation process will
25 continue, or if it will fail at this point (due to the mediator's proposal not being accepted.)

26 2. The parties jointly request the Court to make the following Supplemental Case
27 Management Order:

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The parties request the Court set this mater for a further case management conference for not less than forty-five (45) days from now.

DATED: December 2, 2008 LEWIS BRISBOIS BISGAARD & SMITH LLP

By 
Jeffery G. Bairey
Lorena Matei
Attorneys for Cross-Defendant
ISCO INDUSTRIES, LLC

DATED: December __, 2008 BELL, ROSENBERG & HUGHTS LLP

By _____
Roland Nikles
Attorneys for Plaintiff
ISCO INDUSTRIES, LLC

DATED: December __, 2008 ABBEY, WEITZENBERG, WARREN & EMERY, P.C.

By _____
David W. Berry
Jennifer Millier
Attorneys for Defendant/Cross-Complainant
NORTH BAY CONSTRUCTION, INC.

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4 DATED: December __, 2008 LEWIS BRISBOIS BISGAARD & SMITH LLP

5
6
7 By _____
8 Jeffery G. Bairey
9 Lorena Matei
10 Attorneys for Cross-Defendant
11 ISCO INDUSTRIES, LLC

12
13 DATED: December 2, 2008 BELL, ROSENBERG & HUGHTS LLP

14 By R. Nikles
15 Roland Nikles
16 Attorneys for Plaintiff
17 ISCO INDUSTRIES, LLC

18 DATED: December __, 2008 ABBEY, WEITZENBERG, WARREN & EMERY, P.C.

19 By _____
20 David W. Berry
21 Jennifer Millier
22 Attorneys for Defendant/Cross-Complainant
23 NORTH BAY CONSTRUCTION, INC.

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Jeffery G. Bairey
Lorena Matei
Attorneys for Cross-Defendant
ISCO INDUSTRIES, LLC

DATED: December __, 2008 BELL, ROSENBERG & HUGHTS LLP

By _____
Roland Nikles
Attorneys for Plaintiff
ISCO INDUSTRIES, LLC

DATED: December 2, 2008 ABBEY, WEITZENBERG, WARREN & EMERY, P.C.

By  _____
David W. Berry
Jennifer Millier
Attorneys for Defendant/Cross-Complainant
NORTH BAY CONSTRUCTION, INC.

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SUPPLEMENTAL CASE MANAGEMENT ORDER

The Supplemental Case Management Statement and Proposed Order is hereby adopted by the Court as a Supplemental Case Management Order for the case and the parties are ordered to comply with this Order.

[In addition the Court orders as follows:] **The Case Management Conference is continued to 2/3/09 at 2:00 p.m. An updated CMC statement will be due one week prior to the conference.**

DATED: 12/5/08



UNITED STATES DISTRICT JUDGE
~~Claudia M. Wilkin~~ Wilkin