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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 CASE MANAGEMENT
)	STATEMENT AND ORDER
13 v.)	
)	Date: May 12, 2009
14 NORTH BAY CONSTRUCTION, INC., et al.,)	
)	
15 Defendants.)	
)	
16 _____)	
and RELATED CROSS-ACTION.)	
17 _____)	

18 Pursuant to Civil L.R. 16-14(d), 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 Case Management Statement and Proposed Order
 21 and request the Court to adopt it as a Case Management Order in this case.

22 DESCRIPTION OF CASE DEVELOPMENTS

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

25 Pursuant to Order of this Court signed January 8, 2008, the Court ordered that (1) the
 26 parties are ordered to arbitrate this matter pursuant to the terms from North Bay Construction's
 27 ("NBC") Purchase Order 3102, attached as Exhibit D to the Declaration of Steve Geney in
 28 Support of NBC's Motion to Compel, (2) this action shall be stayed until completion of the

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

5 Since that time, North Bay Construction, Inc. and ISCO Industries, LLC have engaged in
6 an ongoing mediation with mediator Bruce Edwards, Esq. This has been an extended process with
7 the following steps. Mr. Edwards obtained the consent of the County of Sonoma and Winzler &
8 Kelly to participate in the mediation. For background, this project involves a pipeline owned by
9 the County and designed by Winzler & Kelly. It is intended to carry leachate from a landfill to a
10 transfer station. It has never been operational. NBC contends that issues regarding the pipeline
11 involve its design. It was imperative, for any chance of mediated success, for the County and
12 Winzler & Kelly to participate. After Mr. Edwards obtained their participation, experts for the
13 parties worked on a testing protocol, with the objective being getting the pipeline into operation.
14 Given the scientific and technical issues this situation presents, this work has required multiple
15 meetings, reports, and an in person meeting where experts and others traveled from all over the
16 country for a meeting at the North Bay facility and an all-day expert meeting at JAMS in San
17 Francisco. Although the County and Winzler & Kelly are no longer involved in mediation
18 discussions, North Bay and ISCO are continuing with the process.

19 Recently, the County of Sonoma submitted a testing and repair proposal which will be
20 used to determine the scope of any necessary repairs on the project. It is anticipated that the
21 testing will commence shortly and that repairs will be complete in approximately four (4) months.
22 It is not anticipated that fruitful damages conversations can occur until the pipeline is operational.
23 Once the pipeline is operational, the parties will be able to evaluate the scope of total damages and
24 will be able to meaningfully participate in further mediation.

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

The parties request the Court set this mater for a further case management conference for not less than ninety (90) days from now.

DATED: May ____, 2009 LEWIS BRISBOIS BISGAARD & SMITH LLP

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

DATED: May ____, 2009 BELL, ROSENBERG & HUGHTS LLP

By _____
Roland Nikles
Attorneys for Plaintiff
ISCO INDUSTRIES, LLC

DATED: May ____, 2009 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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CASE MANAGEMENT ORDER

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

Case Management Conference is continued to 8/25/09 at 2:00 p.m.

5/6/09

DATED: _____



UNITED STATES DISTRICT JUDGE
Claudia M. Wilkin