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6 Attorneys for Plaintiffs
 7 LENSRAFTERS, INC. and EYEXAM OF CALIFORNIA, INC.

8
 9 IN THE UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

11 LENSRAFTERS, INC. and EYEXAM OF
 12 CALIFORNIA, INC.,

13 Plaintiffs,

14 v.

15 LIBERTY MUTUAL FIRE INSURANCE
 16 COMPANY, EXECUTIVE RISK SPECIALTY
 17 INSURANCE COMPANY, UNITED STATES
 18 FIRE INSURANCE COMPANY, MARKEL
 AMERICAN INSURANCE COMPANY and
 WESTCHESTER FIRE INSURANCE COMPANY,

19 Defendants,

Case No.: C-07-02853 SBA

**STIPULATION AND ORDER
 DISMISSING CERTAIN CLAIMS,
 COUNTER-CLAIMS AND CROSS-
 CLAIMS WITHOUT PREJUDICE**

21 AND RELATED COUNTER- AND CROSS-
 22 CLAIMS.

1 The parties to this action hereby stipulate to the following matters and request the Court to
2 enter an Order dismissing certain claims, counter-claims, and cross-claims without prejudice, as set
3 forth below.

4 A. In this action, Plaintiffs LensCrafters, Inc. and EYEXAM of California, Inc.
5 (together, “LensCrafters”) seek insurance coverage for claims asserted against them in a class
6 action lawsuit entitled *Snow, et al. v. LensCrafters, Inc., et al.*, San Francisco Superior Court Case
7 No. CGC-02-405544 (“*Snow*”). On May 31, 2007, LensCrafters filed a Complaint for Declaratory
8 Relief against its insurers, Liberty Mutual Fire Insurance Company (“Liberty”), Executive Risk
9 Specialty Insurance Company (“ERSIC”), Westchester Fire Insurance Company (“Westchester”),
10 United States Fire Insurance Company (“U.S. Fire”) and Markel American Insurance Company
11 (“Markel). All defendants other than U.S. Fire filed answers to the complaint.

12 B. Markel filed counter-claims against LensCrafters and cross-claims against the other
13 insurers. ERSIC also filed cross-complaints against the other insurers. Westchester filed counter-
14 claims against LensCrafters and cross-complaints against the other insurers.

15 C. On October 2, 2007, LensCrafters filed a First Amended Complaint, which alleged
16 additional claims for relief. ERSIC filed an answer to the First Amended Complaint. Westchester,
17 U.S. Fire and Markel moved to dismiss the Second and Third Claims for Relief in the First
18 Amended Complaint. On February 8, 2008, Westchester withdrew its motion to dismiss. On
19 February 11, 2008, the Court granted the motions of U.S. Fire and Markel and dismissed the
20 Second and Third Claims for Relief.

21 D. On March 3, 2008, U.S. Fire filed an answer to the amended complaint. On July 31,
22 2008, U.S. Fire filed answers to the cross-complaints of ERSIC and Markel and counter-claims
23 against ERSIC and Markel.

24 E. LensCrafters has reached a settlement with the plaintiffs in *Snow*. On August 6,
25 2008, the Court hearing the *Snow* case entered an Order Granting Final Approval of Settlement,
26 Dismissing Action With Prejudice, and Directing Judgment To Be Entered. The Court entered a
27 judgment on the same date.

28 F. Earlier this year, Liberty, ERSIC and Westchester consented to the *Snow* settlement.

1 LensCrafters entered into written settlement agreements with those insurers, pursuant to which
2 Liberty and ERSIC agreed to contribute to the *Snow* settlement fund and Westchester agreed to pay
3 money to LensCrafters.

4 G. On March 20, 2008, this Court granted LensCrafters' motion to dismiss its claims
5 against Liberty, ERSIC and Westchester. The Court dismissed Westchester's claims against
6 LensCrafters and the other insurers on February 26, 2008, and Markel's claims against Westchester
7 on April 24, 2008. ERSIC's claims against Liberty and Westchester were dismissed on April 14,
8 2008. The above dismissals were without prejudice. Due to these dismissals, Westchester is no
9 longer a party to this litigation.

10 H. LensCrafters has now reached a written settlement with Markel, pursuant to which
11 Markel has consented to the *Snow* settlement and agreed to pay money to LensCrafters, and the
12 parties have released claims against one another. As part of the settlement, LensCrafters has agreed
13 to file a dismissal of its claims against Markel without prejudice, and Markel has agreed to file a
14 dismissal of its counter-claims against LensCrafters without prejudice. When the *Snow* settlement
15 becomes final, as defined in the *Snow* settlement agreement, the parties will file dismissals with
16 prejudice.

17 I. As part of the settlement, Markel has assigned to LensCrafters rights that Markel has
18 or may have against U.S. Fire related to the *Snow* action, including claims for contribution,
19 subrogation and indemnity (the "Assigned Claims").

20 J. Markel also wishes to dismiss its cross-claims against Liberty, ERSIC and U.S. Fire
21 without prejudice. Markel's dismissal without prejudice of its cross-claims against U.S. Fire is not
22 intended to release the Assigned Claims or in any way impair LensCrafters' right to pursue the
23 Assigned Claims.

24 THEREFORE, LensCrafters, Liberty, ERSIC, Markel and U.S. Fire, by and through their
25 attorneys of record, stipulate that:

- 26 1. LensCrafters may dismiss all claims against Markel *without prejudice*;
- 27 2. Markel may dismiss all counter-claims against LensCrafters *without prejudice*;
- 28 3. Markel may dismiss all cross-claims against Liberty, ERSIC and U.S. Fire *without*

1 *prejudice*; and

2 4. The parties agree that the dismissal of Markel's claims against U.S. Fire is not a
3 dismissal of the Assigned Claims.

4

5 DATED: September 24, 2008

HELLER EHRMAN LLP

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By /s/ Celia M. Jackson

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Celia M. Jackson

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Attorneys for Plaintiffs

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LENSCRAFTERS, INC. and EYEXAM OF CALIFORNIA,
INC.

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DATED: September 24, 2008

WILLOUGHBY, STUART & BENING

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By /s/ Alexander F. Stuart

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Alexander F. Stuart

13

Attorneys for Defendant

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LIBERTY MUTUAL FIRE INSURANCE COMPANY

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DATED: September 24, 2008

ROSS, DIXON & BELL, LLP

16

By /s/ Monique Fuentes

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Monique Fuentes

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Attorneys for Defendant

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EXECUTIVE RISK SPECIALTY INSURANCE
COMPANY

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DATED: September 24, 2008

LONG & LEVIT LLP

21

By /s/ Chip Cox

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Chip Cox

23

Attorneys for Defendant

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MARKEL AMERICAN INSURANCE COMPANY

25

DATED: September 24, 2008

SQUIRE SANDERS & DEMPSEY L.L.P.

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By /s/ David A. Gabianelli

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David A. Gabianelli

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Attorneys for Defendant

UNITED STATES FIRE INSURANCE COMPANY

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ORDER

Good cause appearing, IT IS HEREBY ORDERED that:

1. LensCrafters' claims against Markel are dismissed *without prejudice*;
2. Markel's counter-claims against LensCrafters are dismissed *without prejudice*, and
3. Markel's cross-claims against Liberty, ERSIC and U.S. Fire are dismissed *without prejudice*.

DATED: 10/7/08


UNITED STATES DISTRICT JUDGE