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7 *Attorneys for Defendant*
 8 *Executive Risk Specialty Insurance Company*

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

11 LENS CRAFTERS, INC., and EYEXAM OF
 12 CALIFORNIA, INC.,

13 Plaintiffs,

14 v.

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

19 Defendants.

No. C07-02853 SBA

[Related Case No. C 04-01001 SBA]

**STIPULATION AND ~~PROPOSED~~
 ORDER DISMISSING CERTAIN
 COUNTERCLAIMS AND CROSS-
 CLAIMS WITHOUT PREJUDICE**

20 AND RELATED CROSS ACTIONS

21
 22 Pursuant to Fed. R. Civ. P. 41(a), the parties to this action hereby stipulate as set forth
 23 below.

24 WHEREAS, on September 4, 2007, defendant/cross-claimant Executive Risk Specialty
 25 Insurance Company (“ERSIC”) filed a Counterclaim against Plaintiff/Counter-Defendants
 26 LensCrafters, Inc. and EYEXAM of California, Inc. (collectively “LensCrafters”) and a Cross-
 27 Complaint against Liberty Mutual Fire Insurance Company (“Liberty”), United States Fire
 28

1 Insurance Company ("U.S. Fire"), Markel American Insurance Company ("Markel") and
2 Westchester Fire Insurance Company ("Westchester") in this matter;

3 WHEREAS, ERSIC previously dismissed its Counterclaim against LensCrafters and its
4 Cross-Complaint as against Liberty and Westchester;

5 WHEREAS, on July 31, 2008, defendant and counter-claimant U.S. Fire filed an Answer
6 and Counterclaim in response to ERSIC's Cross-Complaint.

7 WHEREAS, ERSIC and U.S. Fire have agreed to dismiss their respective claims against
8 each other without prejudice, pursuant to a tolling agreement, in order to avoid potentially
9 unnecessary litigation costs;

10 NOW THEREFORE, is it hereby STIPULATED by and between the remaining parties to
11 the present action, through their attorneys of record, that

12 (1) ERSIC's September 4, 2007 Cross-Complaint is and shall be DISMISSED *without*
13 *prejudice* as to U.S. Fire, and

14 (2) U.S. Fire's July 31, 2008 Counterclaim against ERSIC is and shall be DISMISSED
15 *without prejudice* as to ERSIC.

16 DATED: November 20, 2008

ORRICK, HERRINGTON & SUTCLIFFE LLP

18 By 

19 Darren Teshima
20 Attorneys for Plaintiffs
21 LENS-CRAFTERS, INC. and EYEXAM OF CALIFORNIA,
INC.

22 DATED: November __, 2008

ROSS, DIXON & BELL, LLP

24 By _____
25 Terrence R. McInnis

26 Attorneys for Defendant
27 EXECUTIVE RISK SPECIALTY INSURANCE
COMPANY

1 Insurance Company ("U.S. Fire"), Markel American Insurance Company ("Markel") and
2 Westchester Fire Insurance Company ("Westchester") in this matter;

3 WHEREAS, ERSIC previously dismissed its Counterclaim against LensCrafters and its
4 Cross-Complaint as against Liberty and Westchester;

5 WHEREAS, on July 31, 2008, defendant and counter-claimant U.S. Fire filed an Answer
6 and Counterclaim in response to ERSIC's Cross-Complaint.

7 WHEREAS, ERSIC and U.S. Fire have agreed to dismiss their respective claims against
8 each other without prejudice, pursuant to a tolling agreement, in order to avoid potentially
9 unnecessary litigation costs;

10 NOW THEREFORE, is it hereby STIPULATED by and between the remaining parties to
11 the present action, through their attorneys of record, that

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13 *prejudice* as to U.S. Fire, and

14 (2) U.S. Fire's July 31, 2008 Counterclaim against ERSIC is and shall be DISMISSED
15 *without prejudice* as to ERSIC.

16 DATED: November __, 2008

ORRICK, HERRINGTON & SUTCLIFFE LLP

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18
19 By _____
20 Darren Teshima
21 Attorneys for Plaintiffs
LENSCRAFTERS, INC. and EYEXAM OF CALIFORNIA,
INC.

22 DATED: December 11, 2008

ROSS, DIXON & BELL, LLP

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25 By /s/ Terrence R. McInnis
26 Terrence R. McInnis
27 Attorneys for Defendant
EXECUTIVE RISK SPECIALTY INSURANCE
28 COMPANY

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DATED: December 11, 2008 LONG & LEVIT LLP

By /s/ Chip Cox
Chip Cox
Attorneys for Defendant
MARKEL AMERICAN INSURANCE COMPANY

DATED: December 11, 2008 SQUIRE SANDERS & DEMPSEY L.L.P.

By /s/ Amy Rose
Amy E. Rose
Attorneys for Defendant
UNITED STATES FIRE INSURANCE COMPANY

ORDER

Good cause appearing, IT IS HEREBY ORDERED that:

1. ERSIC's September 4, 2007 Cross-Complaint is and shall be DISMISSED *without prejudice* as to U.S. Fire, and
2. U.S. Fire's July 31, 2008 Counterclaim against ERSIC is and shall be DISMISSED *without prejudice* as to ERSIC.

DATED: 1/9/09


UNITED STATES DISTRICT JUDGE