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7 Attorneys for Plaintiffs  
 LENSRAFTERS, INC. and EYEXAM OF  
 CALIFORNIA, INC.  
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9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 OAKLAND DIVISION

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

14 Plaintiff,

15 v.

16 LIBERTY MUTUAL FIRE INSURANCE  
 COMPANY; EXECUTIVE RISK  
 17 SPECIALTY INSURANCE COMPANY;  
 UNITED STATES FIRE INSURANCE  
 18 COMPANY; MARKEL AMERICAN  
 INSURANCE COMPANY and  
 19 WESTCHESTER FIRE INSURANCE  
 COMPANY,  
 20

21 Defendant.

22 AND RELATED COUNTER- AND  
 CROSS- CLAIMS.

Case No. C-07-2853 SBA

Assigned to Chief Magistrate Judge  
 James Larson for All Discovery  
 Purposes

**STIPULATION AND ORDER  
 DISMISSING CERTAIN CLAIMS  
 WITH PREJUDICE**

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1           The undersigned parties to this action hereby stipulate to the following matters and  
2 respectfully request that the Court to enter an order dismissing certain claims *with prejudice*, as  
3 set forth below.

4           A.       In this action, Plaintiffs LensCrafters, Inc. and EYEXAM of California,  
5 Inc. (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*”). The *Snow* action plaintiffs, on behalf of a class of more than one  
8 million customers, alleged that LensCrafters violated California’s Confidentiality of Medical  
9 Information Act (“COMIA”) by disclosing private medical information.

10           B.       After years of negotiations, LensCrafters reached a settlement with the  
11 plaintiffs in *Snow*. The *Snow* settlement became effective on October 11, 2008. Each of the  
12 defendant insurers, with the exception of United States Fire Insurance Company (“U.S. Fire”),  
13 has consented to the settlement. In connection with the *Snow* settlement, LensCrafters has signed  
14 settlement agreements with each of the defendant insurers, with the exception of U.S. Fire.  
15 Specifically, LensCrafters has settled with Liberty Mutual Fire Insurance Company (“Liberty”),  
16 Executive Risk Specialty Insurance Company (“ERSIC”), Westchester Fire Insurance Company  
17 (“Westchester”), and Markel American Insurance Company (“Markel”).

18           C.       Pursuant to these settlement agreements, LensCrafters, Liberty, ERSIC,  
19 Westchester, and Markel agreed to dismiss certain claims against certain parties without  
20 prejudice. The Court dismissed these claims without prejudice in orders dated March 19, 2008,  
21 April 23, 2008 and October 7, 2008 (Docket Nos. 124, 136, 137, 149).

22           D.       The settlement agreements further provided that the parties would file  
23 dismissals with prejudice. Accordingly, LensCrafters, Liberty, ERSIC, Westchester, and Markel  
24 now seek to dismiss certain claims against each other with prejudice.

25           E.       As part of LensCrafters’s settlement with Markel, Markel has assigned to  
26 LensCrafters rights that Markel has or may have against U.S. Fire related to the *Snow* action,  
27 including claims for contribution, subrogation and indemnity (the “Assigned Claims”). The  
28 Assigned Claims are unaffected by this stipulation.

1                    THEREFORE, LensCrafters, Liberty, ERSIC, Westchester, and Markel, by and  
2 through their attorneys of record, stipulate that:

- 3                    1.      LensCrafters may dismiss all claims against Liberty *with prejudice*;
- 4                    2.      LensCrafters may dismiss all claims against ERSIC *with prejudice*;
- 5                    3.      LensCrafters may dismiss all claims against Westchester *with prejudice*;
- 6                    4.      LensCrafters may dismiss all claims against Markel *with prejudice*.
- 7                    5.      Westchester may dismiss all claims against LensCrafters *with prejudice*;
- 8                    6.      Markel may dismiss all claims against LensCrafters *with prejudice*;

9  
10 DATED: November 7, 2008

ORRICK, HERRINGTON & SUTCLIFFE LLP

11 By /s/ Richard DeNatale

Richard DeNatale

12 Attorneys for Plaintiffs

13 LENS-CRAFTERS, INC. and EYEXAM OF CALIFORNIA,  
INC.

14 DATED: November 20, 2008

WILLOUGHBY, STUART & BENING

15 By /s/ Alexander F. Stuart

Alexander F. Stuart

16 Attorneys for Defendant

17 LIBERTY MUTUAL FIRE INSURANCE COMPANY

18 DATED: November 10, 2008

ROSS, DIXON & BELL, LLP

19 By /s/ Monique Fuentes

Monique Fuentes

20 Attorneys for Defendant

21 EXECUTIVE RISK SPECIALTY INSURANCE  
22 COMPANY

23 DATED: February 11, 2009

LONG & LEVIT LLP

24 By /s/ Irene Yesowitch

Irene Yesowitch

25 Attorneys for Defendant

26 MARKEL AMERICAN INSURANCE COMPANY  
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DATED: November 14, 2008

HARRIS, GREEN & DENNISON

By /s/ Robert D. Dennison

Robert D. Dennison

Attorneys for Defendant

WESTCHESTER FIRE INSURANCE COMPANY

