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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID SANBORN and CECILIA
SANBORN,

Plaintiff(s),

No. C 08-5260 PJH
No. C 08-5286 PJH

v.

**ORDER TERMINATING SECOND-FILED
CASE AS DUPLICATIVE**

ASBESTOS CORPORATION LTD.,
et al.,

Defendant(s).

_____ /

Plaintiffs have filed both a motion to determine whether case number C 08-5286 should be related to the above-captioned case and a stipulation that both cases *are* related, which includes a further stipulation that both cases “be merged into the earliest-filed case.” While the parties may stipulate that in their view the cases are related, the actual determination is one left to the discretion of the assigned judge. Accordingly, the court declines to approve the stipulation of the parties, and instead has related the cases by the appropriate form used in this district.

With respect to any “merger” of cases, neither the local nor national rules of procedure provide for the merger of cases. They do, however, provide for the consolidation of cases and the court construes the request as such. However, given that the motion and stipulation reveal that indeed the second removal was improper, or at least unnecessary, in view of the earlier removal, in that the second removal was the exact same case as the former, just effected by a different defendant, the court finds that consolidation is unwarranted.

Instead the court administratively terminates the second case, docket number C 08-

United States District Court
For the Northern District of California

1 5286, in favor of the earlier filed case. No interest of any defendant will be prejudiced by
2 the closure of the second-filed case. Any and all orders filed in docket number C 08-5260
3 shall bind all parties.

4 **IT IS SO ORDERED.**

5 Dated: December 19, 2008



6 PHYLLIS J. HAMILTON
7 United States District Judge
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