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7 Attorneys for Plaintiff and Cross-Defendants  
 Golden Gate Way, LLC and William and Yolanda  
 8 Peacock

9 **UNITED STATES DISTRICT COURT**  
 10 **NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION**

12 **GOLDEN GATE WAY, LLC, a**  
 13 **California Limited Liability**  
 14 **Company,**

15 **Plaintiff,**

16 **v.**

17 **JEANNE STEWART, JEANNE'S**  
 18 **HAMLIN CLEANERS, JEANNE**  
 19 **STEWART dba HAMLIN CLEANERS,**  
 20 **TOMMY LEE STEWART, LEONARD**  
 21 **A. GROSS, LEONARD A. GROSS**  
 22 **PROFESSIONAL CORPORATION,**  
 23 **MARTINO FAMILY TRUST, PAULINE**  
 24 **F. KIDWELL AND GERALD**  
 25 **MARTINO, TRUSTEES, ESTATE OF**  
 26 **RONALD MONROE, DECEASED,**  
 27 **ESTATE OF MATTHEW MONROE,**  
 28 **DECEASED and DOES 1-10,**  
**inclusive,**

**Defendants.**

**AND RELATED CROSS-CLAIMS**  
**AND COUNTER-CLAIMS.**

**No. 09-CV-04458-DMR**

**JOINT STIPULATION FOR ORDER RE**  
**FURTHER EXTENSION OF TIME TO**  
**COMPLETE MEDIATION; ~~PROPOSED~~**  
**ORDER**

**Complaint Filed: 9/22/09**

**[Assigned for All Purposes to Magistrate**  
**Judge Donna Ryu]**

1 THE PARTIES HEREBY STIPULATE and respectfully request from the Court as  
2 follows:

3 WHEREAS this is an action primarily arising under the federal Comprehensive  
4 Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C.  
5 §§9601, *et seq.*

6 WHEREAS from October 2010 to January 2011, environmental consultants  
7 Environmental Resources Management ("ERM") have performed and completed an on-  
8 site investigation on the property located at 3421, 3423, and 3425 Golden Gate Way in  
9 Lafayette, California, which Plaintiffs allege is consistent with the Workplan that ERM  
10 submitted to the San Francisco Bay Regional Water Quality Control Board ("RWQCB")  
11 on March 6, 2009, and which the RWQCB approved;

12 WHEREAS ERM's on-site investigation consisted of further collection and analysis  
13 of soil vapor and groundwater samples, and installation and analysis of monitoring wells,  
14 just to name a few, with the objective of characterizing the occurrence of volatile organic  
15 compounds ("VOCs") in the relevant property's soil and groundwater and evaluate the  
16 potential for migration of VOCs into indoor air and groundwater;

17 WHEREAS in July 2011 the Regional Water Quality Control Board ("RWQCB")  
18 issued a draft Tentative Order, ordering the dischargers named in the order to conduct  
19 the following activities, among others: operate the soil vapor extraction ("SVE") to  
20 address human health risks; conduct quarterly monitoring and sampling of groundwater  
21 wells and soil vapor probes; define the lateral extent of contamination in groundwater,  
22 including sampling of (i) the adjacent property where an apartment building is located;  
23 and (ii) property south of Lafayette Creek; conduct indoor air sampling in buildings  
24 underneath the groundwater plume; and propose and implement a remedial action plan;

25 WHEREAS pursuant to the Court's Civil Conference Minute Order dated July 13,  
26 2011 ("Court's CMC Order"), the Court ordered the Parties to participate in mediation  
27 through the Northern District of California ADR Program, and to complete mediation on or  
28 before September 30, 2011;

1 WHEREAS pursuant to the Court's CMC Order, on or about August 17, 2011, the  
2 Parties agreed to participate in mediation on September 27, 2011, using Mr. Lester Levy  
3 of JAMS as mediator. In attempting to schedule the mediation, Plaintiff Golden Gate  
4 Way LLC and Cross-defendant William Peacock and Yolanda Peacock (collectively  
5 "Plaintiffs") , through their counsel attempted several times to contact Defendant Gross to  
6 remind him of his obligation to participate in mediation pursuant to the Court's CMC  
7 Order;

8 WHEREAS the RWQCB's draft Tentative Order named Defendant Leonard Gross  
9 as a "discharger" under the Porter-Cologne Act;

10 WHEREAS sometime in late August 2011, Defendant Gross contacted counsel for  
11 Plaintiffs to inform counsel that he could not and will not participate in the mediation due  
12 to health reasons. Plaintiffs' counsel reminded Defendant Gross that he was indeed  
13 ordered by the Court to participate in mediation and that if he could not physically  
14 participate in mediation, it is recommended that he retain counsel or have an authorized  
15 agent on his behalf appear for the mediation with authority to achieve settlement on his  
16 behalf;

17 WHEREAS on September 8, 2011, Defendant Gross, through a letter from his  
18 son, informed the Court and Parties that he would not participate in mediation scheduled  
19 for September 27, 2011;

20 WHEREAS the Parties, particularly Plaintiffs and Defendants Jeanne Stewart,  
21 Jeanne's Hamlin Cleaners, Jeanne Stewart dba Hamlin Cleaners, and Tommy Lee  
22 Stewart, believe that Defendant Gross is a significant potentially responsible party to this  
23 action and is therefore a vital party to any settlement in this action;

24 WHEREAS on September 19, 2011, the Parties except Defendant Gross  
25 participated in a conference call with the mediator Lester Levy. Two days later, on  
26 September 21, 2011, the Parties received a letter from Mr. Levy's case assistant, Patricia  
27 Usak, who informed the Parties that after Mr. Levy spoke with the ADR Program clerk,  
28 Ms. Robin Seifkin, it has been suggested that the mediation should be postponed due in

1 large part to Defendant Gross' inability or failure to participate;

2 WHEREAS on a conference call among and between the Parties (except  
3 Defendant Gross) and Ms. Seifkin on September 26, 2011, it was decided that the  
4 Parties submit either an ex parte motion to continue the hearing or a joint stipulation to do  
5 the same, assuming the Parties are able to obtain Mr. Gross' consent to stipulate; and

6 WHEREAS on September 27, 2011, counsel for Plaintiffs spoke over telephone  
7 with Defendant Gross and during this conversation Defendant Gross represented that he  
8 does not object to continuing the mediation deadline as proposed in this Stipulation.

9 NOW, THEREFORE, IT IS HEREBY STIPULATED by and between the Parties—  
10 and the Parties hereby respectfully request that the Court enter as its order—the  
11 following:

12 (1) The mediation deadline date of September 30, 2011 is vacated;

13 (2) The Parties shall *participate* in mediation and the time to complete  
14 mediation in this action is extended up to and including November 30, 2011;

15 (3) The parties are directed to seek a new mediation date through the  
16 Court's ADR Program;

17 (4) Consistent with the Court's CMC Order dated July 13, 2011, prior to  
18 completion of mediation on or before November 18, 2011, "discovery shall be limited to  
19 written discovery, plus depositions as follows: the parties may take 1 deposition per party  
20 group (e.g., one deposition may be taken of the Hamlin/Stewart party group, Martino  
21 party group, etc., for a total of five depositions."

22 (5) Consistent with the Court's CMC Order, as of December 1, 2011, all  
23 previously imposed discovery limitations shall be deemed lifted; and

24 (6) At least 10 days in advance of the due date for the submission of  
25 mediation briefs that will be set by the mediator, Plaintiffs shall provide detailed cost  
26 information to each party in the form of a spreadsheet setting forth investigative costs  
27 (incurred and future), costs of remediation (incurred and future), and projected costs for  
28 future monitoring, to the extent these amounts differ from the cost information provided

1 by Plaintiff to the Parties in preparation for the mediation previously set for September 27,  
2 2011.

3 **SIGNATURES UNDER GENERAL ORDER NO. 45**

4 Pursuant to General Order No. 45 of the United States District Court Northern  
5 District of California, I, John T. Cu, the ECF User whose User ID and Password are used  
6 in the filing of this document hereby attest that the concurrence of the filing of this  
7 document has been obtained from each of the other signatories to this document.

8 DATED: September 29, 2011

HANSON BRIDGETT LLP

9 By: /S/ John T. Cu  
10 JOHN T. CU  
11 Attorneys for Plaintiff  
12 Golden Gate Way, LLC  
13 Cross-Defendants  
14 William and Yolanda Peacock

15 DATED: September 29, 2011

WOOD SMITH HENNING & BERMAN

16 By: /S/ David Ferguson Wood  
17 DAVID FERGUSON WOOD  
18 MATTHEW KOVACS  
19 Attorneys for Defendants  
20 Jeanne Stewart, Jeanne's Hamlin  
21 Cleaners, Jeanne Stewart dba Hamlin  
22 Cleaners and Tommy Lee Stewart  
23 FELDMAN LAW GROUP

24 DATED: September 29, 2011

25 By: /S/ Aaron R. Feldman  
26 AARON R. FELDMAN  
27 Attorneys for Cross-Defendant  
28 Joy Lou Monroe

1 DATED: September 29, 2011

OPPER & VARCO LLP

2

By: /S/ Linda C. Beresford \_\_\_\_\_

3

LINDA C. BERESFORD

4

SUZANNE R. VARCO

5

Attorneys for Cross-Defendant

6

Scott Monroe

7

Dated: September 29, 2011

ARMSTRONG & ASSOCIATES

8

By: /S/ Amber Craig \_\_\_\_\_

9

WILLIAM H. ARMSTRONG

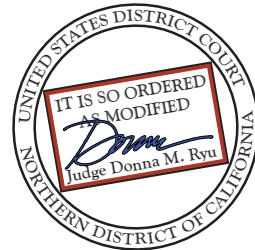
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AMBER CRAIG

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

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DATED this \_\_\_\_ day of \_\_\_\_\_, 2011

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\_\_\_\_\_  
Honorable Donna Ryu  
Magistrate Judge of the Federal District  
Court for the Northern District of  
California

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