

E-Filed 8/13/10

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 8 UNITED STATES DISTRICT COURT OF CALIFORNIA
 9 NORTHERN DISTRICT OF CALIFORNIA

10
 11 SURF AND SAND, LLC, a California
 Limited Liability Company,

12 Plaintiff,

13 v.

14
 15 CITY OF CAPITOLA; BOB BEGUN;
 SAM STOREY; RONALD GRAVES;
 16 KIRBY A. NICOL; DENNIS NORTON;
 and DOES 1 through 100, inclusive,

17 Defendants.

) Case No.: C09-05542 RS
 (Related to 07-05043 RS)

) Case Assigned to:
 Honorable Richard Seeborg
 Courtroom: 3

18 E FILING

19 STIPULATION AND ~~PROPOSED~~
 ORDER RE FILING OF FIRST
 20 AMENDED ANSWER AND DEEMING
 COMPLAINT AMENDED

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1 Plaintiff and Defendants Stipulate as follows:

2 1. Defendants have filed a motion for leave to file a First Amended Answer in
3 order to include an affirmative defense based on the alleged failure of Plaintiffs to file a tort
4 claim file and that any claim that was filed was not proper, as it relates to Plaintiff's state
5 claims, set to be heard September 23, 2010;

6 2. Plaintiff stipulates that the proposed First Amended Answer may be filed in
7 exchange for Defendants' agreement that Plaintiff's Complaint is deemed amended to allege
8 that Plaintiff timely submitted a proper tort claim to Defendant City of Capitola and
9 Defendant denied the tort claim. Plaintiff and Defendants stipulate and agree that Plaintiff
10 may present evidence in this action regarding the alleged failure to comply with any state tort
11 claims affirmative defense asserted in the City's First Amended Answer without the filing of
12 an amended Complaint.

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14 Dated: August 12, 2010

HART, KING & COLDREN

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17 By: 

Robert S. Coldren
C. William Dahlin
Mark D. Alpert
Attorneys for Plaintiff Surf and Sand, LLC

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19
20
21 Dated: August 12, 2010

ENDEMAN, LINCOLN, TUREK & HEATER

22
23
24 By: 

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A. Nicol and Dennis Norton

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ORDER

Having read the Stipulation and good cause appearing, the Court orders that the proposed First Amended Answer may be filed and that Plaintiff's Complaint is deemed amended to allege that Plaintiff timely submitted a tort claim to Defendant City of Capitola and that Defendant City of Capitola denied the tort claim. Plaintiff may present evidence in this action regarding the alleged failure to comply with any state tort claims affirmative defense asserted in the City's First Amended Answer without the filing of an amended Complaint.

Date: August 13, 2010



Honorable Judge Richard Seeborg