

FILED

AUG 19 2016

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA ex rel.
KASOWITZ, BENSON, TORRES, &
FRIEDMAN LLP,

Plaintiff,

v.

BASF CORPORATION, et al.,
Defendants.

CASE NO. 15-2262 DMR

UNITED STATES' NOTICE OF ELECTION TO
DECLINE INTERVENTION; PROPOSED
ORDER TO UNSEAL

FILED UNDER SEAL

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court of its decision not to intervene in this action.

Although the United States declines to intervene, we respectfully refer the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing, however, that the "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." *Id.* The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the United States has the right only to a hearing when it objects to a settlement or dismissal of the action. *U.S. ex rel. Green v. Northrop Corp.*,

1 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th
2 Cir. 1994).

3 Therefore, the United States requests that, should either the relator or the defendants propose that
4 this action be dismissed, settled, or otherwise discontinued, this Court provide the United States with
5 notice and an opportunity to be heard before ruling or granting its approval.
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7 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings
8 filed in this action be served upon the United States; the United States also requests that orders issued by
9 the Court be sent to the Government's counsel. The United States reserves its right to order any
10 deposition transcripts, to intervene in this action, for good cause, at a later date, and to seek the dismissal
11 of the relator's action or claim. *See* 31 U.S.C. § 3730(c)(2),(3). The United States also requests that it
12 be served with all notices of appeal.
13

14 Finally, the United States requests that the Court unseal: the Relator's Complaint, the summons,
15 the scheduling order, the Consent to Magistrate Judge Jurisdiction, Relator's Motion for Leave to
16 Amend the Complaint, the Court's Order to Respond to Plaintiff and Relator's Motion to File an
17 Amended Complaint, the Statement of No Opposition by the United States to Relator's Motion to File
18 an Amended Complaint, the Court's Order Granting Plaintiff and Relator's Motion for Leave to Amend
19 Complaint, the First Amended Complaint, this Order, and the accompanying U.S. Notice of Election to
20 Decline Intervention.

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1 The United States requests that all other contents of the Court's file in this matter (including, but
2 not limited to, any applications filed by the United States for extensions of the investigative period, any
3 applications for partial lifting of the seal, and any other orders previously entered in this matter) remain
4 under seal and not be made public or served upon Defendants.

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6 DATED: August 18, 2016

Respectfully submitted,

7 BRIAN J. STRETCH
8 United States Attorney

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10 By: 
11 ERICA BLACHMAN HITCHINGS
12 Assistant United States Attorney

13 **[PROPOSED] ORDER**

14 The United States, having declined to intervene in this action pursuant to the Federal False
15 Claims Act, 31 U.S.C. § 3730(b)(4)(B), the Court rules as follows:

16 IT IS HEREBY ORDERED that,

17 1. The Relator's Complaint, the summons, the scheduling order, the Consent to Magistrate
18 Judge Jurisdiction, Relator's Motion for Leave to Amend the Complaint, the Court's Order to Respond
19 to Plaintiff and Relator's Motion to File an Amended Complaint, the Statement of No Opposition by the
20 United States to Relator's Motion to File an Amended Complaint, the Court's Order Granting Plaintiff
21 and Relator's Motion for Leave to Amend Complaint, the First Amended Complaint, this Order, and the
22 accompanying U.S. Notice of Election to Decline Intervention are hereby unsealed.

23 2. The relator shall serve the First Amended Complaint upon the defendants.

24 3. Any applications and/or declarations that have been filed under seal by the United States for
25 an extension of the sixty-day investigative period or for any other reason shall remain under seal and not
26 be made public or served upon the defendants.

27 4. The seal shall be lifted as to all other matters occurring in this action after the date of this
28 Order.

1 5. The parties shall serve all pleadings and motions filed in this action, including supporting
2 memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may
3 order any deposition transcripts and are entitled to intervene in this action, for good cause, at any time.


4 6. The parties shall serve all notices of appeal upon the United States.

5 7. All orders of this Court shall be sent to the United States.

6 8. Should the relator or the defendant(s) propose that this action be dismissed, settled, or
7 otherwise discontinued, the Court will provide the United States with notice and an opportunity to be
8 heard before ruling or granting its approval.

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10 IT IS SO ORDERED.

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12 Dated: Aug 19, 2016

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15 DONNA M. RYU
16 UNITED STATES MAGISTRATE JUDGE
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CERTIFICATE OF SERVICE

I, TINA LOUIE, declare:

That I am a citizen of the United States and employed in the City and County of San Francisco, California; that my business address is United States Attorney's Office, 450 Golden Gate Avenue, 9th Floor, San Francisco, California 94102, that I am over the age of eighteen years; and that I am not a party to the above-entitled action;

That on August 19, 2016, I deposited in the United States mails, in an envelope bearing the requisite postage, a copy of

United States' Notice of Election to Decline Intervention; [Proposed] Order To Unseal

FILED UNDER SEAL


addressed to:

Andrew A. Davenport
Kasowitz, Benson, Torres & Friedman LLP
1349 West Peachtree Street, N.W.
Suite 1500
Atlanta, Georgia 30309

at his/her last known address at which place there is service by United States mail.

This Certificate is executed on August 19, 2016, at San Francisco, California.

I certify under penalty of perjury that the foregoing is true and correct.



TINA LOUIE
Legal Assistant

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ex rel.
KASOWITZ, BENSON, TORRES &
FRIEDMAN, LLP

Plaintiff,

v.

BASF CORPORATION, ET AL,

Defendants.

Case Number: C-15-2262-DMR

**CERTIFICATE OF SERVICE
(UNDER SEAL)**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 19, 2016, I SERVED a true and correct copy of the Order to Unseal, Relator to serve the First Amended Complaint upon Defendants, and Parties to Serve all pleadings and motions upon the United States, by placing said copy in a postage paid envelopes addressed to the persons hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy into an inter-office delivery receptacle located in the Clerk's office.

William M. Goodman
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Atlanta, GA 30309

Erica Blachman Hitchings
Assistant United States Attorney
450 Golden Gate Avenue, Box 36055
San Francisco, CA 94102-3495

Dated: August 19, 2016

Susan Y. Soong, Clerk


By: Ivy Garcia, Deputy Clerk