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5 Attorneys for Defendants
 6 WALSH/DEMARIA JOINT VENTURE V, WALSH
 CONSTRUCTION COMPANY, THE WALSH GROUP
 7 LTD., and DEMARIA BUILDING COMPANY, INC.

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

11
 12 THE UNITED STATES OF AMERICA, for
 the Use and Benefit of J.R. CONKEY &
 13 ASSOCIATES, INC., a California
 corporation; and J.R. CONKEY &
 14 ASSOCIATES, INC., a California
 corporation,

15 Plaintiff,

16 vs.

17 WALSH/DEMARIA JOINT VENTURE V,
 an Illinois joint venture; WALSH
 18 CONSTRUCTION COMPANY, AN Illinois
 corporation; THE WALSH GROUP LTD., an
 19 Illinois corporation; DEMARIA BUILDING
 COMPANY, INC., a Michigan corporation;
 20 TRAVELERS CASUALTY AND SURETY
 COMPANY OF AMERICA, a Connecticut
 21 corporation; and DOES 1 through 10

22 Defendants.
 23

CASE NO.: 5:14-cv-03360-PSG

**STIPULATION TO RELATE CASES
 AND ~~PROPOSED~~ ORDER**

FILE DATE: July 24, 2014
 TRIAL DATE SET: No Date Set

STIPULATION TO RELATE CASES

24 Defendants, Walsh/DeMaria Joint Venture V (“Walsh/DeMaria”), Walsh Construction
 25 Company (“Walsh Construction”), The Walsh Group Ltd. (“Walsh Group”), DeMaria Building
 26 Company, Inc. (“DeMaria Building”) (collectively “Walsh”), Travelers Casualty and Surety
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1 Company of America (“Travelers”) and Liberty Mutual Insurance Company (“Liberty Mutual”)
 2 (collectively the “Sureties”), Plaintiffs, The United States of America, for the use and benefit of
 3 J.R. Conkey & Associates, Inc. and J.R. Conkey & Associates, Inc. (“Conkey”) and Plaintiff, The
 4 United States of America, for the use and benefit of Fought & Company, Inc. Fought &
 5 Company, Inc. (“Fought”) (all collectively referred to as the “Conkey and Fought Parties”), by
 6 and through their respective counsel of record herein, hereby stipulate and agree as follows:

7 RELATED ACTIONS

8 WHEREAS, Plaintiff, J.R. Conkey, commenced an action entitled *J.R. Conkey v. Walsh*
 9 *DeMaria Joint Venture V. et al.* (N.D. Cal.) Case No. 5:14-cv-03360-PSG (“Conkey Action”) by
 10 filing a complaint on or about July 24, 2014, in the United States District Court for the Northern
 11 District of California, including a cause of action for recovery on Miller Act Payment Bond,
 12 pursuant to 40 U.S.C. §§ 3131-3134, relating to monies allegedly owed for work performed at a
 13 Veterans Administration (“VA”) hospital in Palo Alto;

14 WHEREAS, Plaintiff, Fought, commenced an action entitled *Fought v. Walsh DeMaria*
 15 *Joint Venture V. et al.* (N.D. Cal.) Case No. 5:14-cv-04401-HRL (“Fought Action”) by filing a
 16 complaint on or about September 30, 2014, in the United States District Court for the Northern
 17 District of California, including a Miller Act Payment Bond claim for relief, pursuant to 40
 18 U.S.C. §§ 3131 et seq., relating to monies allegedly owed for work performed at a Veterans
 19 Administration hospital in Palo Alto;

20 WHEREAS, Defendants, Walsh, filed a counter-claim against Conkey on or about
 21 December 8, 2014 in the Conkey Action, *inter alia*, for failing to defend and indemnify Walsh
 22 and its Sureties against the Fought Action and for breaching the Subcontract Agreement;

23 WHEREAS, Defendants, Walsh, filed a cross-claim in the Fought Action against Conkey
 24 on or about December 9, 2014 asserting the same claims alleged in its counter-claim against
 25 Conkey in the Conkey Action;

26 RELATIONSHIP OF THE ACTIONS

27 WHEREAS, Defendant Walsh/DeMaria entered into a contract (the “Prime Contract”)
 28 with the United States of America, Department of Veteran Affairs, for the construction of the VA

1 Palo Alto Health Care System Capital Asset Improvements, Phase I, Contract No. VA101CFM-
 2 C-0168 (“the Project”), also known as the VA Hospital, Palo Alto Polytrauma Blind Rehab
 3 Center, 3801 Miranda Avenue, Palo Alto, CA;

4 WHEREAS, on or about October 7, 2011, Walsh/DeMaria entered into and executed a
 5 Payment Bond with Travelers, Travelers Bond No. 105669430, and its co-surety, Liberty Mutual,
 6 Liberty Mutual Bond No. 013124426, with Walsh as principal and Travelers and Liberty Mutual
 7 as Surety;

8 WHEREAS, on or about February 3, 2012, Walsh/DeMaria entered into a written
 9 Subcontract Agreement with Conkey, Subcontract Number 212010S01 for certain labor and
 10 materials to be provided by Conkey on the Project;

11 WHEREAS, on or about October 17, 2012, Conkey entered into a sub-subcontract with
 12 Fought for certain labor, materials, and equipment on the Project;

13 **CRITERIA FOR RELATED ACTIONS PER L.R. 3-12(a)**

14 WHEREAS, Civil Local Rule 3-12 provides that actions are related when:

- 15 (1) The actions concern substantially the same parties, property, transaction or
 16 event; and
 17 (2) It appears likely that there will be an unduly burdensome duplication of
 18 labor and expense or conflicting results if the cases are conducted before
 different Judges;

19 WHEREAS, the actions concern substantially the same parties because Walsh, Travelers,
 20 Liberty Mutual and Conkey are parties to both actions;

21 WHEREAS, the actions concern substantially the same transaction or event because the
 22 lawsuits arise from the same work for building demolition, for the same Project in Palo Alto for
 23 the VA, concerning the same contracts between Walsh and the VA, Walsh and Conkey, and
 24 Conkey and Fought, and claims are being made under the same bonds issued by the same
 25 Sureties. Further, Walsh filed the same claims for relief in its counter-claim and cross-claim
 26 against Conkey in the Conkey Action and Fought Action;

27 WHEREAS, there will be an unduly burdensome duplication of labor and expense and
 28 conflicting results if the cases are conducted before different judges because Walsh’s counter-

1 claim and cross-claim are the same in both cases. Further, the payment issues are substantially
2 the same in both cases because they concern substantially the same parties, facts and law, as the
3 claims in both actions are pursuant to the Miller Act;

4 WHEREAS, all Parties in the Conkey Action and Fought Action agree that these actions
5 should be related; and

6 WHEREAS, the Conkey Action is the lowest numbered case, such that if the cases are
7 related the Fought Action should be reassigned to Magistrate Judge Paul S. Grewal, who is
8 assigned to the Conkey Action, pursuant to L.R. 3-12 (f)(3).

9 THEREFORE, IT IS HEREBY STIPULATED AND AGREED BY THE
10 COUNSEL SIGNATORIES BELOW, ON BEHALF OF THEIR RESPECTIVE
11 CLIENTS, AND THE PARTIES RESPECTFULLY REQUEST THAT THE
12 COURT ORDER THE FOLLOWING:

13 (1) That the Conkey Action and Fought Action, including related counter-claims and
14 cross-claims, should be related pursuant to L.R. 3-12 because the actions concern substantially
15 the same parties, property, transaction or event and it appears likely that there will be an undue
16 burdensome duplication of labor and expense or conflicting results if the cases are conducted
17 before different Judges; and

18 (2) That the Clerk reassign the Fought Action to Magistrate Judge Paul S. Grewal
19 pursuant to L.R. 3-12 (f)(3).

20 **IT IS SO STIPULATED.**

21 Dated: December ____, 2014

**MARKS, FINCH, THORNTON &
BAIRD, LLP**

David S. Demian
Jeffrey B. Baird
Christopher R. Sillari
Attorneys for Plaintiffs
THE UNITED STATES OF AMERICA, for
the Use and Benefit of J.R. CONKEY &
ASSOCIATES, INC., a California
corporation; and J.R. CONKEY &
ASSOCIATES, INC., a California
corporation,

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Dated: December ____, 2014

HANSON BRIDGETT LLP

Robert W. O'Connor
John W. Klotsche
Attorneys for Plaintiffs
THE UNITED STATES OF AMERICA, for
the Use and Benefit of FOUGHT &
COMPANY, INC., an Oregon corporation;
and FOUGHT & COMPANY, INC., an
Oregon corporation,

Dated: December ____, 2014

NEWMAYER & DILLION, LLP

J. Brian Morrow
Attorneys for Defendants
WALSH/DEMARIA JOINT VENTURE V,
WALSH CONSTRUCTION COMPANY,
THE WALSH GROUP LTD., and
DEMARIA BUILDING COMPANY, INC.

Dated: December ____, 2014

CORFIELD FELD LLP

Michael A. Corfield
Natalie M. Kellogg
Attorneys for Travelers Casualty and Surety
Company of America and Liberty Mutual
Insurance Company

PROPOSED ORDER

The foregoing Stipulation to Relate Cases, by Defendants, Walsh/DeMaria Joint Venture V, Walsh Construction Company, The Walsh Group Ltd., DeMaria Building Company, Inc., Travelers Casualty and Surety Company of America and Liberty Mutual Insurance Company, Plaintiffs, The United States of America, for the use and benefit of J.R. Conkey & Associates, Inc. and J.R. Conkey & Associates, Inc. and Plaintiff, The United States of America, for the use and benefit of Fought & Company, Inc. Fought & Company, Inc., has been submitted to the Court for consideration.

THE COURT, HAVING REVIEWED AND CONSIDERED THE FOREGOING STIPULATION, AND GOOD CAUSE APPEARING THEREFOR, HEREBY ORDERS:

(1) That the cases entitled *J.R. Conkey v. Walsh DeMaria Joint Venture V. et al.* (N.D. Cal.) Case No. 5:14-cv-03360-PSG and *Fought v. Walsh DeMaria Joint Venture V. et al.* (N.D. Cal.) Case No. 5:14-cv-04401-HRL, including related counter-claims and cross-claims, are deemed related pursuant to L.R. 3-12 because the actions concern substantially the same parties, property, transaction or event and it appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges; and

(2) That the Clerk reassign the Fought Action, the highest numbered case, to Magistrate Judge Paul S. Grewal pursuant to L.R. 3-12 (f)(3).

IT IS SO ORDERED.

Dated: December 24, 2014


Magistrate Judge Paul S. Grewal