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 11 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

12 ARCHER WESTERN CONTRACTORS, LLC
 13 A Delaware foreign limited-liability company
 14
 Plaintiff,
 15
 v.
 16 THE ERECTION COMPANY, INC.,
 A Washington corporation
 17
 and
 18 TRAVELERS CASUALTY AND SURETY
 19 COMPANY OF AMERICA,
 A Connecticut Corporation
 20
 Defendants.
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CASE NO. 2:17-cv-03032-GMN-NJK

STIPULATION TO STAY and ORDER

22 Plaintiff, Archer Western Contractors, LLC, (“Archer Western”), and Defendants, The
 23 Erection Company, Inc. (“TEC”), and Travelers Casualty and Surety Company of America
 24 (“Travelers TEC”) ¹, (collectively referred to as the “Parties”), by counsel, hereby stipulate to stay
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27 ¹ Travelers issued payment and performance bonds to both Archer Western and TEC.
 28 Travelers’ bonds related to Archer Western are referred to as “Archer Western Travelers”.
 Travelers’ bonds related to TEC are referred to as “Travelers TEC”.

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1 this litigation. This joint stipulation is made for good cause and is not made with any intent to
2 delay these proceedings. This Stipulation is based upon the information and case law provided
3 below.

4 **STIPULATION**

5 **I. INTRODUCTION**

6 The Parties seek to stay the pending action for two primary reasons:

7 (a) Archer Western filed this lawsuit due to concerns regarding the expiration of the statute
8 of limitation; and

9 (b) The resolution of a pending dispute between Archer Western and the Federal Aviation
10 Administration (“FAA”) may resolve this lawsuit and other pending and potential
11 lawsuits as delineated below.

12 **II. STATEMENT OF THE CASE**

13 This litigation is related to and arises from disputes between Archer Western and the FAA
14 regarding the construction of the new Air Traffic Control Tower and Terminal Radar Approach
15 Control at McCarran International Airport, Las Vegas, Nevada (“Project”). It also arises from
16 disputes between Archer Western, its subcontractors, and their subcontractors regarding the
17 assertions of affirmative claims.

18 Archer Western, as general contractor, entered into a prime contract with the FAA, the
19 owner, to construct the Project. Archer Western entered into subcontracts with the Gallagher-
20 Kaiser Corporation (“G-K”) and Fisk Electric Company (“Fisk”), wherein G-K was to perform
21 certain mechanical and plumbing work for the Project as a subcontractor to Archer Western, and
22 wherein Fisk was to perform certain electrical work.

23 During the Project, the FAA materially altered the character of Archer Western’s work on
24 the Project by, among other things, issuing numerous changes and design revisions – including
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1 changes and design revisions to G-K's mechanical and plumbing work and Fisk's electrical work.
2 The FAA's changes and design revisions are described in detail in Archer Western's claims
3 against the FAA (Notices of Contract Dispute), which are included as part of Exhibit A attached
4 hereto. The FAA's numerous changes and design revisions significantly increased Archer
5 Western's, G-K's and Fisk's cost of performing their work. Archer Western contends that it also
6 increased the cost of G-K's and Fisk's subcontractors. TEC and Travelers TEC dispute that
7 contention and the contention that Archer Western may seek indemnification for claims by any of
8 G-K's or Fisk's subcontractors.. The FAA's changes and design revisions also impacted Archer
9 Western's and G-K's ability to perform their work in a timely and cost-effective manner.
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11 Additionally, Archer Western alleges that the work of Archer Western, its subcontractors,
12 and their lower-tiered subcontractors was affected by significant delays to the entire Project caused
13 by TEC, which had been retained by one of Archer Western's subcontractors to do the steel
14 erection work on the Project. TEC disputes and denies this allegation. While a previous lawsuit
15 between Archer Western, TEC, and Travelers TEC was settled and dismissed, the settlement
16 agreement between the parties exempted claims relating to the Project from G-K and Fisk.²
17 Archer Western and Archer Western Travelers contend that the settlement agreement also
18 exempted claims from G-K and Fisk's subcontractors. TEC and Travelers TEC dispute that
19 contention.
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21 Archer Western asserts that G-K and Fisk Electric, subcontractors to Archer Western, have
22 asserted claims against Archer Western and Archer Western Travelers. Archer Western also
23 asserts that subcontractors of G-K have asserted claims against Archer Western and Archer
24 Western Travelers. TEC and Travelers TEC dispute that these claims are exempted from the
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28 ² The dismissed case is The Erection Co., Inc. v. Archer Western Contractors, LLC, et al.
Case No. 2:12-cv-00612-MMD-MJK.

1 settlement agreement between Archer Western and Archer Western Travelers and TEC and
2 Travelers TEC.

3 G-K, has filed a legal action against Archer Western and/or Archer Western Travelers, and
4 this action has been dismissed without prejudice for one primary reason, namely that the pending
5 action between Archer Western and the FAA will potentially resolve the claims of G-K and of
6 Fisk. Desert Mechanical and Liberty Duct also filed legal actions against Archer Western and/or
7 Archer Western Travelers, which have been stayed. TEC and Travelers TEC dispute that they
8 might have any liability related to those claims and that their actions and/or claims are exempted
9 from the settlement agreement.
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11 As a result of the FAA's changes and design revisions, and in accordance with the dispute
12 resolution process in the prime contract, Archer Western submitted its claims for additional
13 compensation (Notices of Contract Dispute) to the Office of Dispute Resolution for Acquisitions
14 ("ODRA"). (Exhibit A.) That dispute is pending. ODRA is the sole, statutorily designated
15 tribunal for all contract disputes under the FAA's management system. 14 CFR Part 17.
16

17 A substantial portion of the pending claims against Archer Western by its subcontractors
18 relates to claimed delay damages, and, as stated, Archer Western contends that TEC caused
19 substantial delays on the Project, a contention disputed by TEC. Because of statute of limitation
20 concerns, Archer Western asserts that it could not wait until its claim against the FAA was
21 resolved to assert a claim against TEC and Travelers TEC but was forced to file the instant lawsuit.
22 However, as the ultimate outcome of Archer Western's claim against the FAA will have a
23 significant effect on this case and the other pending claims and cases, the Parties seek to stay this
24 action pending the resolution of the ODRA action.
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1 **III. LEGAL SUPPORT**

2 A. The Legal Standard

3 The “power to stay proceedings is incidental to the power inherent in every court to control
4 the disposition of the causes on its docket with economy of time and effort for itself, for counsel,
5 and for litigants. How this can best be done calls for the exercise of judgment, which must weigh
6 competing interests and maintain an even balance.” Landis v. North American. Co., 299 U.S. 248,
7 254-55 (1936). There is no requirement that “before proceedings in one suit may be stayed to
8 abide the proceedings in another, the parties to the two causes must be shown to be the same and
9 the issues identical.” Id. at 254.

11 “Where it is proposed that a pending proceeding be stayed, the competing interests which
12 will be affected by the granting or refusal to grant a stay must be weighed. Among these
13 competing interests are the possible damage which may result from the granting of a stay, the
14 hardship or inequity which a party may suffer in being required to go forward, and the orderly
15 course of justice measured in terms of simplifying or complicating the issues, proof, and questions
16 of law which could be expected to result from a stay.” CMAX, Inc. v. Hall, 300 F.2d 265, 268
17 (1962).

19 “A trial court may, with propriety, find it is efficient for its own docket and the fairest
20 course for the parties to enter a stay of an action before it, pending resolution of independent
21 proceedings which bear upon the case. This rule applies whether the separate proceedings are
22 judicial, administrative, or arbitral in character, and does not require that the issues in such
23 proceedings are necessarily controlling of the action before the court.” Leyva v. Certified Grocers
24 of California, Ltd., 593 F.2d 857, 863-864 (9th Cir. 1979).

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1 B. The Present Litigation should be stayed until the dispute between Archer Western and
2 the FAA is resolved.

3 As stated, this case was filed by Archer Western because of statute of limitation concerns.
4 The case, however, is significantly related to other pending litigation and claims, all of which arise
5 out of the same Project, with the main dispute being the one between Archer Western and the FAA
6 as described in Exhibit “A”. It is likely that the outcome of that dispute will significantly affect the
7 other pending claims of Archer Western’s subcontractors and sub-subcontractors, and may well
8 cause this case to be dismissed or be consolidated with one of the other cases. In the meantime,
9 and because of that likely outcome, the Parties hereto should not be forced to incur significant
10 attorney’s fees and costs.

11 C. The “Competing Interests of Justice” in the Present Matter Support a Stay of this
12 Litigation

13 The “competing interests” in the present matter also support a stay of this litigation. See
14 CMAX, Inc., 300 F.2d 265, 268. In the first instance, no possible damage to the Parties or this
15 Court will result from the stay, and TEC and Travelers TEC will not be prejudiced by a stay of this
16 litigation. See Id. A stay of the present litigation would only be temporary and would only remain
17 in effect until such time that the ODRA proceedings are exhausted. Once the ODRA proceedings
18 conclude, this litigation can resume, if necessary, and the stay will not result in TEC and Travelers
19 TEC losing any contractual or legal rights.

20 However, if the present litigation is not stayed, the Parties will be prejudiced and will suffer
21 “hardship or inequity.” See Id. Litigating the same issues in this Court and ODRA at the same
22 time would be duplicative and unduly burdensome. If this litigation is not stayed, the Archer
23 Western will incur unnecessary attorneys’ fees and legal costs in having to litigate the same issues
24 simultaneously in different jurisdictions, and TEC and Travelers TEC will incur similar fees and
25 cost.
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1 Furthermore, if this litigation is not stayed, Archer Western, TEC and Travelers TEC
2 would be forced to litigate issues related to the claims of other contractors and subcontractors,
3 whose own actions against Archer Western have been stayed or dismissed. That, in turn, would
4 potentially result in inconsistent outcomes, duplicative proceedings and discovery, and might not
5 resolve any of the pending disputes.
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7 In fact, this lawsuit, by its very nature, relates to the claims of G-K and Fisk, and indirectly
8 to the dispute between Archer Western and the FAA. If this case is not stayed, Archer Western will
9 in all likelihood move to have it consolidated with one of the other pending lawsuits, because of
10 the assertion of delay damages by one of those plaintiffs. Because those cases are presently stayed,
11 the ultimate result would be the same.

12 The “orderly course of justice” and the judicial economy of this Court would be enhanced
13 if this litigation were stayed and the ODRA proceedings were allowed to proceed to determine the
14 entitlement and measure of Archer Western’s damages resulting from claims by G-K and/or Fisk.
15 Archer Western and Archer Western Travelers also contend that this lawsuit pertains to claims of
16 G-K’s and Fisk’s subcontractors. TEC and Travelers TEC dispute that contention and the
17 contention that Archer Western may seek indemnification for claims by any of G-K’s or Fisk’s
18 subcontractors. Judicial resources and time would be saved if this litigation is stayed because the
19 risk of inconsistent findings and judgments would be avoided. Also, if this litigation is stayed,
20 Archer Western could recover damages against the FAA in the ODRA proceedings for these other
21 pending claims and, as a result, these claims against Archer Western could be resolved without the
22 need for this litigation. Even if the ODRA proceedings do not resolve all of the issues between
23 Archer Western and G-K, the ODRA proceedings will at the very least significantly narrow the
24 issues. Nevertheless, if this litigation is stayed, there would be no harm to the Parties as the stay
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1 could be lifted upon the conclusion of the ODRA proceedings, and the Parties would not incur any
2 fees and cost in the meantime.

3 **IV. CONCLUSION**

4 Based on the above, the Parties respectfully requests that this Court stay this litigation until
5 the owner related disputes process against the FAA is exhausted.

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7 By agreeing to this Stipulation, TEC and Travelers TEC do not waive and Archer Western
8 agrees that TEC and Travelers TEC retain any and all defenses which they have to Archer
9 Western's complaint, and which they could have asserted in a responsive pleading pursuant to the
10 Federal Rules of Civil Procedure.

11 Dated this 25th day of May, 2018.

Dated this 25th day of May, 2018.

12 **THE FAUX LAW GROUP**

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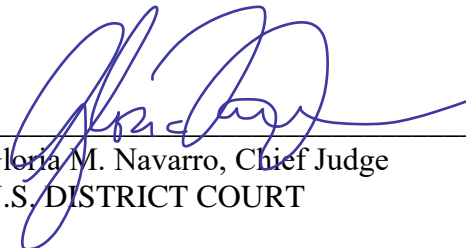
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21 **ORDER**

22 **IT IS HEREBY ORDERED** that the above Stipulation to Stay, (ECF No. 9), is
23 **GRANTED. IT IS FURTHER ORDERED** that the parties will provide a status report of
24 the pending FAA dispute by Tuesday, September 4, 2018, and every forty-five (45) days
25 thereafter.

26 DATED this 14 day of June, 2018.

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Gloria M. Navarro, Chief Judge
U.S. DISTRICT COURT