Russell D. Cook 094934 1 Neal D. Douglass 227976 LAW OFFICE OF RUSSELL D. COOK 1233 West Shaw Avenue, Suite 100 Fresno, California 93711 Telephone: (559) 225-2510 Facsimile: (559) 229-3941 5 Attorneys for Plaintiff, Davis Moreno Construction, Inc., a California corporation. 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA - FRESNO BRANCH 10 -000-11 DAVIS MORENO CONSTRUCTION, Case No. 1:08-CV-00854-OWW-SMS 12 INC., a California corporation, EX PARTE APPLICATION TO AMEND SUPPLEMENTAL SCHEDULING ORDER 13 Plaintiff. AND AMENDED ORDER THEREON 14 15 16 FRONTIER STEEL BUILDINGS CORP., a Colorado corporation; 17 Defendant(s). 18 19 20 Plaintiff DAVIS MORENO CONSTRUCTION, by and through their attorney of record, 21 22 Russell D. Cook hereby requests ex parte for a continuation/extension of the pre trial 23 conference date as well as all scheduling dates associated with it. 24 The basis of the request is that the parties are in settlement negotiations that may 25 result in a trial not proceeding on the date scheduled. The parties would like the additional 26 time before the preparation of extensive pre trial statements to potentially resolve the entire 27 case, thereby saving substantial costs and expenses associated with the preparation for 28 the pre trial.

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This ex parte application would have been by way of stipulation, as Mr. Meininger has agreed in principal to the continuance but has not reviewed the contents of the stipulation. As such, it was changed to provide that the application was by an ex parte application by Russell D. Cook

The parties propose the following dates/deadlines set forth in the court's Supplemental Scheduling Conference Order and based upon the following request the court enter an order thereon.

- 1. Pursuant to the court's Supplemental Scheduling Conference Order (Document 69 Filed 11/16/09) a pretrial scheduling conference is set for December 13, 10 2010, at 11:00 a.m. in Courtroom 3, 7th Floor, before the Honorable Oliver W. Wanger. We 11 are requesting that the Court continue the pre trial conference to early January
- 2. Local Rule 281 (Fed. R. Civ. P. 16) require Plaintiff to serve its statement 13 fourteen days prior to the pretrial conference and Defendant is to serve its statement seven 14 days prior to the conference. This would require Plaintiff to file its statement by November 15 30, 2010 while Defendant would have until December 6, 2010.
- 3. The court issued its ruling on the parties respective cross-motions for 17 summary judgment on November 2, 2010, as Document No. 118.
- 4. The court's ruling on the cross-motions for summary judgment has prompted 19 the parties to engage in additional settlement discussions in an attempt to resolve this 20 matter.
- 5. To allow time for these discussions to occur without the parties continuing to 22 incur additional attorneys fees complying with the pretrial deadlines such as preparing a 23 pretrial brief, the parties respectfully request the court permit the following extensions 24 concerning the deadline for file pretrial briefs:
 - A: Plaintiff shall file its pretrial brief on or before December 20, 2010;
 - B: Defendant shall file its pretrial brief on or before December 30, 2010.
 - C: That the court reschedule the pre trial conference for the first week in January.

I declare under penalty of perjury, under the laws of the State of California, that the 1 2 foregoing is true and correct. 3 4 Executed this 30th day of November, 2010, at Fresno, California. 5 6 /s/ RUSSELL D. COOK 7 8 9 **ORDER** 10 The Court having reviewed the forgoing ex parte application of Russell D. Cook as 11 well as his declaration setting forth the reasons for the requested extension and for good 12 cause appearing, the Court hereby ORDERS as follows: 13 A: Plaintiff shall file its pretrial brief on or before December 20, 2010; 14 B: Defendant shall file its pretrial brief on or before December 30, 2010. 15 C: That the court reschedule the pre trial conference for January 10, 2011 16 at 11:00 a.m. 17 D: That the court reschedule the jury trial for February 23, 2011 at 9:00 18 a.m. 19 20 21 IT IS SO ORDERED. 22 23 Date: <u>12/21</u>/2010 /s/ OLIVER W. WANGER UNITED STATES DISTRICT COURT JUDGE 24 25 26 27 28