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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 BRUCE AVANS,

12 Plaintiff,

13 v.

14 FOSTER WHEELER  
15 CONSTRUCTION COMPANY, an  
16 unknown business entity; FOSTER  
17 WHEELER CONSTRUCTORS, INC., a  
18 Delaware corporation; and DOES 1 to  
19 100, inclusive,

20 Defendant.

Case No. 1:10-CV-00922-LJO-JLT

**ORDER GRANTING IN PART  
AND DENYING IN PART  
STIPULATION TO MODIFY  
SCHEDULING ORDER**

(Doc.20)

21 On January 14, 2011, the parties filed a stipulation to extend certain dates  
22 outlined in the Scheduling Order. (Doc. 20) The parties assert that, despite their  
23 diligence in accomplishing discovery, they have been unable to complete the  
24 discovery due to the need to locate two witnesses who are former employees of  
25 Defendant and to depose several third-party witnesses. (Doc. 20 at 2) In addition,  
26 the parties indicate that they wish to pursue settlement and believe that their efforts  
27 in this regard will be more fruitful if they are not required to use resources in  
28 discovery that could be used to settle the case. Id. The Court finds that the inability

1 to locate important witnesses is good cause to modify the Scheduling Order,  
2 however, delayed settlement efforts are not.

3 On the other hand, the dates proposed by the parties fail to allow non-  
4 dispositive motions to be decided before the filing of dispositive motions. (Doc. 20 at  
5 2-3) Thus, the Court will **GRANT IN PART and DENY IN PART** the stipulated  
6 request to modify the Scheduling Order as follows:

- 7 (a) Non-expert discovery cut-off : April 8, 2011;
- 8 (b) Expert discovery cut-off: April 8, 2011;
- 9 (c) Joint expert disclosure: February 28, 2011;
- 10 (d) Rebuttal expert disclosure: March 14, 2011;
- 11 (e) Non-dispositive motion filing date: April 13, 2011; and
- 12 (f) Non-dispositive motion hearing date: May 13, 2011.

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15 IT IS SO ORDERED.

16 Dated: January 18, 2011

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE