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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

JOHN C. BRISBIN, an individual, dba
CONSTRUCTION DEVELOPMENT
SYSTEMS,

Plaintiff,

v.

VULCAN MATERIALS COMPANY, a New
Jersey corporation; and DOES 1 through 100,
inclusive,

Defendants.

THE UNITED STATES OF AMERICA, for
the Use and Benefit of CALMAT CO., a
Delaware corporation, dba VULCAN
MATERIALS COMPANY – WESTERN
DIVISION; et al,

Counter-Claimants,

v.

JOHN C. BRISBIN, an individual, dba
CONSTRUCTION DEVELOPMENT
SYSTEMS; WESTERN SURETY
COMPANY, a South Dakota corporation,

Counter-Defendant.

Case No.: 1:11-cv-00568-AWI-SKO

**STIPULATION TO AMEND
SCHEDULING ORDER; ORDER
THEREON**

1 Plaintiff and Counter-Defendant JOHN C. BRISBIN, an individual, dba
2 CONSTRUCTION DEVELOPMENT SYSTEMS (“CDS”), Counter-Defendant WESTERN
3 SURETY COMPANY, a South Dakota corporation (“WESTERN”), and Defendant and
4 Counter-Claimant CALMAT CO., a Delaware corporation, dba VULCAN MATERIALS
5 COMPANY – WESTERN DIVISION (“VULCAN”), hereby agree and stipulate as follows:

6 **RECITALS**

7 WHEREAS, the Scheduling Order dated July 12, 2011 contained a deadline of
8 October 31, 2011 for the completion of all discovery pertaining to non-experts.

9 WHEREAS, on October 12, 2011, the Parties submitted a Stipulation and Proposed
10 Order requesting to Amend the Scheduling Order to continue the deadline for completion of
11 non-expert discovery from October 31, 2011 to January 31, 2012, which request was granted by
12 the Court on October 17, 2011.

13 WHEREAS, on December 29, 2011, the Parties submitted a Stipulation and Proposed
14 Order requesting to Amend the Scheduling Order to continue all deadlines and dates in the case
15 for sixty (60) days. This Stipulation was necessitated by the ill health of Plaintiff John Brisbin,
16 who was going to require surgery. Accordingly, the Parties delayed the depositions which had
17 been scheduled for early December 2011, and a mediation that had been scheduled for
18 December 15, 2011. By Order dated January 4, 2012, the Court granted the Parties’ request and
19 established new dates and deadlines, including a new discovery completion date of March 16,
20 2012.

21 WHEREAS, CDS, WESTERN and VULCAN have responded to Interrogatories and
22 Requests for Production of Documents propounded by the other party, and are obtaining
23 documents from non-party witnesses, but have yet to commence depositions.

24 WHEREAS, CDS, WESTERN and VULCAN had scheduled a private mediation on
25 January 27, 2012, before Mediator James M. Phillips, Esq., and agreed to conduct the necessary
26 depositions and completion of other discovery in the case after the mediation, if unsuccessful, in
27 order to save attorney’s fees and costs.

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1 WHEREAS, on or about January 17, 2012, counsel for Plaintiff was advised that
2 Mr. Brisbin was required to undergo chemotherapy and radiation treatment and would be
3 unavailable for at least 6 weeks to conduct the previously scheduled mediation and subsequent
4 depositions.

5 WHEREAS, the Parties are in the process of re-scheduling the mediation before
6 Mr. Phillips for the latter part of March 2012.

7 WHEREAS, CDS, WESTERN and VULCAN will not be able to meet the March 16,
8 2012 deadline for completion of discovery, as currently dictated by the Scheduling Order, if they
9 conduct the mediation in the latter part of March and, if the mediation is unsuccessful, the
10 necessary depositions thereafter. Accordingly, the Parties respectfully request that this Court
11 extend each date and deadline by approximately sixty (60) days.

12 NOW, THEREFORE, IT IS HEREBY STIPULATED by and between CDS, WESTERN
13 and VULCAN as follows:

14 1. The deadline for completion of non-expert discovery shall be continued from
15 March 16, 2012 for 60 days to on or about May 16, 2012;

16 2. The deadline for completion of expert discovery shall be continued from
17 March 16, 2012 for 60 days to on or about May 16, 2012;

18 3. The deadline for filing of Non-Dispositive Motions shall be continued from
19 March 21, 2012 for 60 days to on or about May 21, 2012;

20 4. The deadline for filing of Dispositive Motions shall be continued from April 27,
21 2012 for 60 days to on or about June 27, 2012;

22 5. The Settlement Conference shall be continued from May 17, 2012 for 60 days to
23 on or about July 17, 2012, or any later date convenient on the Court's calendar;

24 6. The Pre-Trial Conference shall be continued from July 25, 2012 for 60 days to on
25 or about September 25, 2012, or any later date convenient on the Court's calendar;

26 7. The Trial shall be continued from September 18, 2012 for 60 days to on or about
27 November 19, 2012, or any later date convenient on the Court's calendar;

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1 **ORDER**

2 The parties' stipulated request for an amendment to the schedule is GRANTED.
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4 **However, the dates proposed by the parties for the Pre-Trial Conference and the Trial**
5 **have been adjusted to comport with Judge Ishii's trial calendar.** The parties' amended
6 schedule is as follows:

- 7
- 8 1. The deadline for completion of non-expert discovery is **May 16, 2012;**
 - 9 2. The deadline for completion of expert discovery is **May 16, 2012;**
 - 10 3. Non-dispositive motions shall be filed on or before **May 21, 2012;**
 - 11 4. Non-dispositive motions shall be heard **on or before June 20, 2012;**
 - 12 5. Dispositive motions shall be filed **on or before June 27, 2012;**
 - 13 6. Dispositive motions shall be heard **on or before August 6, 2012;**
 - 14 7. The Settlement Conference is set for **July 17, 2012 at 10:30 a.m.;**
 - 15 8. The Pre-Trial Conference is set for **September 26, 2012;** and
 - 16 9. The Trial date is **November 27, 2012.**

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19 IT IS SO ORDERED.

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21 Dated: **February 2, 2012**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE