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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.

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

**STIPULATION TO RESET THE  
SETTLEMENT CONFERENCE DATE  
AND EXTEND REMAINING TRIAL  
DEADLINES; ORDER THEREON**

AND RELATED COUNTERCLAIMS.

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

**RECITALS**

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

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

5           WHEREAS, on December 29, 2011, the Parties submitted a Stipulation and Proposed  
6 Order requesting to Amend the Scheduling Order to continue all deadlines and dates in the case  
7 for sixty (60) days. This Stipulation was necessitated by the ill health of Plaintiff John Brisbin,  
8 who was going to require surgery. Accordingly, the Parties delayed the depositions which had  
9 been scheduled for early December 2011, and a mediation that had been scheduled for  
10 December 15, 2011. By Order dated January 4, 2012, the Court granted the Parties' request and  
11 established new dates and deadlines, including a new discovery completion date of March 16,  
12 2012.

13           WHEREAS, on January 26, 2012, 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 continued ill health of Plaintiff  
16 John Brisbin, who was required to undergo chemotherapy and radiation treatments.  
17 Accordingly, the Parties delayed the depositions and rescheduled mediation to April 18, 2012.  
18 By Order dated February 3, 2012, the Court granted the Parties' request and established new  
19 dates and deadlines, including a new discovery completion date of May 16, 2012.

20           WHEREAS, on May 11, 2012, the Parties submitted a Stipulation and Proposed Order  
21 requesting to Amend the Scheduling Order to continue the deadline for completion of discovery,  
22 which request was granted by the Court on May 15, 2012.

23           WHEREAS, CDS, WESTERN and Vulcan participated in a Mandatory Settlement  
24 Conference before the Court on July 17, 2012 and, in anticipation of potentially resolving the  
25 dispute between them, held off on taking expert witness depositions in the hopes of resolving the  
26 dispute without further expenditures of costs and fees.

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1 WHEREAS, during the Mandatory Settlement Conference before the Court on July 17,  
2 2012, it was disclosed to the Court and to counsel for Vulcan that based upon the medical  
3 condition of Plaintiff John Brisbin and setbacks suffered as a result of continued side effects of  
4 chemotherapy and radiation treatments to combat cancer, Plaintiff would be seeking a  
5 continuance of the trial date currently scheduled for November 27, 2012.

6 WHEREAS, the Court indicated at the Mandatory Settlement Conference that it would  
7 review the request for continuance of the trial by Plaintiff upon a showing of good cause.

8 WHEREAS, on August 16, 2012, the Parties submitted a Stipulation and Proposed Order  
9 to Continue Trial and Related Dates. By Order dated August 24, 2012, the Court granted the  
10 Parties' request and continued the Trial to March 26, 2013, and continued the Pretrial  
11 Conference to January 29, 2013. The Court also vacated the Settlement Conference set for  
12 October 9, 2012, and ordered the Parties to meet and confer regarding their availability to attend  
13 a continued Settlement Conference on November 29, 2012 or January 8, 2013. The Court also  
14 ordered the parties to further meet and confer regarding the deadlines for expert disclosures and  
15 expert witness depositions.

16  
17 NOW, THEREFORE, IT IS HEREBY STIPULATED by and between CDS, WESTERN  
18 and VULCAN as follows:

- 19  
20 1. The Settlement Conference be reset on January 8, 2013.  
21 2. Supplemental Expert Disclosures shall be exchanged by the Parties on October 1,  
22 2012.  
23 3. The Parties shall complete expert discovery by December 14, 2012.

24 Dated: August 29, 2012

25  
26 LANG, RICHERT & PATCH, P.C.

27  
28 By: /s/ Matthew W. Quall  
Matthew W. Quall

Attorneys for Plaintiff and  
Counter-Defendant JOHN C.  
BRISBIN, an individual, dba  
CONSTRUCTION DEVELOPMENT  
SYSTEMS

Dated: August 29, 2012

LIPSCHULTZ & SCHERAGO LLP

By: /s/ James D. Lipschultz  
James D. Lipschultz  
Attorneys for Defendant and Counter-  
Claimant CALMAT CO., a Delaware  
corporation, dba VULCAN MATERIALS  
COMPANY – WESTERN DIVISION

**ORDER**

Based upon the stipulation of the parties and good cause appearing therefrom, IT IS  
ORDERED that:

1. The Settlement Conference is continued to January 8, 2013, at 10:30 a.m. in  
Courtroom 7;
2. The Parties shall exchange Supplemental Expert Disclosures on or before October 1,  
2012; and
3. Expert discovery shall be completed by December 14, 2012.

IT IS SO ORDERED.

Dated: September 4, 2012

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE