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 and Cross-Defendant
 11 WESTERN SUMMIT CONSTRUCTORS, INC.

12 [Additional Counsel Identified at End]

13 **UNITED STATES DISTRICT COURT**

14 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

15 BLACK & VEATCH CORPORATION,

16 Plaintiff,

17 vs.

18 MODESTO IRRIGATION DISTRICT,

19 Defendant.

Case No.: 1:11-CV-00695 LJO SKO

**STIPULATION AND ORDER
 GRANTING LEAVE TO FILE
 WESTERN SUMMIT
 CONSTRUCTORS, INC.'S CROSS-
 COMPLAINT**

20 MODESTO IRRIGATION DISTRICT,

21 Counterclaimant,

22 vs.

23 BLACK & VEATCH CORPORATION,

24 Counterdefendant.

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MODESTO IRRIGATION DISTRICT,

Third-Party Plaintiff,

vs.

WESTERN SUMMIT CONSTRUCTORS,
INC.; BIG B CONSTRUCTION, INC.;
FEDERAL INSURANCE COMPANY;
FIDELITY AND DEPOSIT COMPANY
OF MARYLAND; AND TRAVELERS
CASUALTY AND SURETY COMPANY
OF AMERICA,

Third-Party Defendants.

WESTERN SUMMIT CONSTRUCTORS,
INC.,

Counter-Complainant,

vs.

MODESTO IRRIGATION DISTRICT,

Counter-Defendant.

CITY OF MODESTO,

Cross-Claimant,

vs.

WESTERN SUMMIT CONSTRUCTORS,
INC.,

Cross-defendant

1 IT IS HEREBY STIPULATED by and between Western Summit Constructors, Inc.
2 (“WSCCI”); Black & Veatch Corporation (“B&V”), Modesto Irrigation District (“MID”),
3 Big B Construction, Inc.; Federal Insurance Company; Fidelity and Deposit Company of
4 Maryland; Travelers Casualty and Surety Company of America; and the City of Modesto
5 (“the City”), through their respective attorneys of record, that WSCCI may have leave to file
6 its Cross-Complaint, a copy of which proposed Cross-Complaint is attached hereto.

7 The proposed Cross-Complaint adds a new party as a cross-defendant, Siemens
8 Industry Inc. fka Siemens Water Technologies Corporation (“Siemens”), and adds cross-
9 claims by WSCCI against Siemens for Express Contractual Indemnity, Implied Contractual
10 Indemnity, Equitable Indemnity, and Declaratory Relief. All of the proposed cross-claims
11 arise from the membrane filtration system that Siemens delivered to WSCCI for use on the
12 Phase 2 Expansion and Optimization of the Modesto Regional Water Treatment Plant
13 (“Project”), which Project is the subject of all existing claims among all current parties to
14 this Action. Both MID and the City have asserted contract and tort claims against WSCCI
15 based in part on the work Siemens performed for WSCCI on the Project. By the proposed
16 Cross-Complaint, WSCCI seeks indemnity from Siemens for those MID and City claims.

17 WSCCI represents that it has acted diligently to evaluate its potential claims against
18 Siemens and did not delay in its request to file the proposed Cross-Complaint. WSCCI
19 tendered to Siemens the claims asserted against WSCCI in this action, which are the subject
20 of its proposed Cross-Complaint, promptly after WSCCI was served with those claims; the
21 City’s cross-complaint against WSCCI was not deemed filed until March 27, 2012; and
22 B&V, MID and WSCCI all have submitted to the Court on April 27, 2012 proposed
23 amendments to their respective pleadings.

24 The parties’ Stipulation is based on the parties’ intention to preserve the Court’s time
25 and resources by filing only necessary motions. By this Stipulation, no party stipulates or
26 admits to the propriety or merit of any of WSCCI’s claims against Siemens in the proposed
27 Cross-Complaint, or any of the allegations contained therein.

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1 **SO STIPULATED:**

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3 DATED: April 30, 2012

DIEPENBROCK ELKIN LLP

4
5 By: /s/ Eileen M. Diepenbrock
6 Eileen M. Diepenbrock

7 Attorneys for Third-Party Defendant/Counterclaimant
8 WESTERN SUMMIT CONSTRUCTORS, INC. and
9 Third-Party Defendants FEDERAL INSURANCE
10 COMPANY; FIDELITY AND DEPOSIT COMPANY
11 OF MARYLAND; and TRAVELERS CASUALTY
12 AND SURETY COMPANY OF AMERICA

11 DATED: April 30, 2012

WULFSBERG REESE COLVIG & FIRSTMANP

12
13 By: /s/ Stephen L. Cali
14 H. James Wulfsberg
15 Stephen L. Cali

16 Attorneys for Plaintiff and Counterdefendant
17 BLACK & VEATCH CORPORATION

18 DATED: April 30, 2012

HANSON BRIDGET LLP

19
20 By: /s/ Tyson M. Shower
21 Andrew G. Giacomini
22 Tyson M. Shower

23 Attorneys for Defendant, Counterclaimant, Third-Party
24 Defendant and Counterdefendant MODESTO
25 IRRIGATION DISTRICT
26
27
28

1 DATED: April 30, 2012

CLAPP MORONEY BELLAGAMBA VUCINICH
BEEMAN AND SCHELEY

2
3
4 By: /s/ Robert A. Bellagamba
Robert A. Bellagamba

5 Attorneys for Third Party Defendant
6 BIG B CONSTRUCTION

7
8 DATED: April 30, 2012

DAVIDOVITZ & BENNETT LLP

9
10 By: /s/ Patricia Lakner
Patricia Lakner

11 Attorneys for Defendant, Counterclaimant and Cross-
12 Claimant
13 CITY OF MODESTO

14
15 **ORDER**

16 Pursuant to the above Stipulation of the parties, WSCI may file the Cross-Complaint
17 as described above. The Cross-Complaint on the docket (Doc. No. 100) shall be deemed
18 filed and served on all parties as of the date of this Order.

19 IT IS SO ORDERED.

20 Dated: May 1, 2012

/s/ Sheila K. Oberto
21 UNITED STATES MAGISTRATE JUDGE

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IDENTIFICATION OF COUNSEL

<p><i>Counsel for Plaintiff Black & Veatch Corporation</i> Wulfsberg Reese Colvig & Firstman, PC H. James Wulfsberg jwulfsberg@wulflaw.com David James Hyndman dhyndman@wulflaw.com Stephen L. Cali scali@wulflaw.com 300 Lakeside Drive, 24th Floor Oakland, CA 94612-3524</p> <p>Lang, Richert & Patch Mark L. Creede mlc@lrplaw.net Matthew W. Quall mwq@lrplaw.net 5200 North Palm Avenue, Fourth Floor Fresno, CA 93704</p>	<p><i>Counsel for Western Summit Constructors, Inc.</i> Diepenbrock Elkin LLP Eileen M. Diepenbrock emd@diepenbrock.com Chris A. McCandless cam@diepenbrock.com Jonathan R. Marz jrm@diepenbrock.com 400 Capitol Mall, Suite 1800 Sacramento, CA 95814</p> <p>Neil Hall O'Donnell, nho@rjo.com Aaron P. Silverman aps@rjo.com Rogers Joseph O'Donnell 311 California Street, 10th Floor San Francisco, CA 94104</p>
<p><i>Counsel for Modesto Irrigation District</i> Hanson Bridgett LLP Andrew G. Giacomini agiacomini@hansonbridgett.com Tyson M. Shower tshower@hansonbridgett.com 500 Capitol Mall, Suite 1500 Sacramento, CA 95814</p> <p>McCormick, Barsto, Sheppard, Wayte & Carruth LLP Stephen E. Carroll stephen.carroll@mccormickbarstow.com P.O. Box 28912 5 River Park Place East Fresno, CA 93720-1501</p>	<p><i>Counsel for Intervenor City of Modesto</i> Davidovitz & Bennett LLP Moris Davidovitz mdavidovitz@dblawsf.com Patricia S. Lakner plakner@dblawsf.com One Embarcadero Center, Suite 750 San Francisco, CA 94111</p>
	<p><i>Counsel for Third Party Defendant Big B Construction, Inc.</i> Clapp, Moroney, Bellagamba, Vucinich, Beeman and Scheley Robert A. Bellagamba rbellagamba@clappmoroney.com 6130 Stoneridge Mall Road, Suite 275 Pleasanton, CA 94588</p>