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14				
15	UNITED STATES DISTRICT COURT			
16	EASTERN DISTRICT OF CALIFORNIA			
17				
18	BRYAN C. MCINTIRE, an Individual,	Case No. 2:11-CV-02495-LKK-CKD		
19	Plaintiff,	PARTIES' STIPULATED MOTION TO MODIFY PRETRIAL SCHEDULING		
20	VS.	ORDER AND EXTEND LAW AND MOTION AND ORDER		
21	SUNRISE SPECIALTY COMPANY, a California Corporation,			
22	Defendant.			
23				
24 25	SUNRISE SPECIALTY COMPANY, a California Corporation,			
26	Counterclaimant,			
27	vs.			
28	BRYAN C. MCINTIRE, an Individual,			
20	Counterdefendant.			
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PARTIES' STIPULATED MOTION TO MODIFY PRETRIAL SCHEDULING ORDER AND EXTEND LAW AND MOTION

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McIntire v. Sunrise Specialty Company

STIPULATED MOTION TO EXTEND THE DEADLINE FOR LAW AND MOTION

COME NOW Defendant Sunrise Specialty Company (hereinafter "Defendant Sunrise"), by and through its attorney, Ronnie Fischer of the Fischer Law Firm, P.C., and the Plaintiff Bryan C. McIntire, by and through his attorney, Loren Lunsford of Martensen * Wright PC, and hereby jointly move the Court to modify the Scheduling Order in this matter, as follows:

- 1. This Motion seeks to modify the law and motions dates and all other related dates in this matter, thus to modify the schedule of this case. The trial of this matter is set for May 14, 2013. A Final Pretrial Conference is set for February 4, 2013.
- 2. The applicable *Status (Pretrial Scheduling) Conference* Order in this matter [Doc #13] provides at page 10 (Miscellaneous Provisions) that modifications of the Pretrial Scheduling Order may only be obtained by leave of Court upon a showing of good cause. Further, the Court cautioned that changes to any of the scheduled dates would necessarily result in changes to all other dates.
- 3. At the last hearing of this matter related to whether a construction hearing would be held, the parties discussed with the Court the filing of Motions for Summary Judgment to resolve material issues in this case.
- 4. The Defendant also anticipates filing a *Daubert* motion to strike the Plaintiff's expert.
- 5. All law and motion proceedings are to be conducted so as to be completed by November 1, 2012. (Pretrial Scheduling Order, p. 2).
- 6. However, the parties had anticipated resolution of claims construction sooner in this case. The hearing was originally set for September 28, 2012, and it was moved twice, eventually taking place on October 12, 2012.
- 7. It would not be prudent to file a motion for summary judgment and argue one or the other party's interpretation of claim terms or design principles because until the Markman hearing took place, the argument would be mere speculation. Only after the Markman

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hearing took place could the parties file a meaningful and fully informed motion for summary judgment.

- 8. The parties could not "complete" the summary judgment process between October 12, 2012, and November 1, 2012.
- 9. The parties have conferred, and believe it would be beneficial to the case to conduct cross motions for summary judgment. Resolution of key issues of law to which the parties cannot agree would be beneficial. Even if the case would not be resolved outright with resolution of the summary judgment motions, it is likely that the Court's rulings on the motions would facilitate settlement of the case.
- 10. Additionally, the process would inform the parties of each other's positions in more concrete terms, likely contributing to movement toward compromise and settlement.
- 11. The law and motion would narrow and refine the legal issues raised by the case, and dispose of those issues that are susceptible to resolution without trial.
- 12. Therefore, there is good cause for extending the Motion Hearings Schedule to accommodate the requested motion process.
- 13. The parties request that they be permitted to: 1) file Motions for Summary Judgment by November 9, 2012; 2) file responses to the other party's Motion by December 7, 2012 (to account for the Thanksgiving Holidays in the interim); and, 3) to file Replies by December 17, 2012. The hearing on the motions will be set for 10:00 a.m. on January 28, 2013, in Courtroom 4, which is available on the Court's calendar.
 - 14. The Notice of Hearing will be served according to Local Rule 230.
- 15. The Final Pretrial Conference is set for February 4, 2013. The ruling on summary judgment might affect pretrial preparations and jury instructions, so it would be prudent to postpone and reset the Final Pretrial Conference to a later date.
- 16. Similarly, the trial date should be postponed to a date after the Final Pretrial Conference.

1		WHEREFORE,	the parties shall file Motions for Summary Judgment by
2	November	16, 2012, and the	Final Pretrial Conference and the Trial are vacated pending
3	resolution of the law and motion(s).		
4			Respectfully submitted,
5	Dated:	November 9, 2012	FISCHER LAW FIRM, P.C.
6			
7			By: /s/Ronnie Fischer RONNIE FISCHER
8			Attorneys for Defendant/Counterclaimant
9	Dated:	November 9, 2012	DOWLING AARON INCORPORATED
10			
11			By: /s/ Kenton J. Klassen KENTON J. KLASSEN
12			Attorneys for Defendant/Counterclaimant
13	Dated:	November 9, 2012	MARTENSEN * WRIGHT, P.C.
14			
15			By: <u>/s/ Loren L. Lunsford</u> LOREN L. LUNSFORD
16			Attorneys for Plaintiff
17			
18	IT IS SO ORDERED.		
19	Dated: November 9, 2012		
20			
21	LAWRENCE K. KARLTON		
22	SENIOR JUDGE		
23	UNITED STATES DISTRICT COURT		
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