

1 ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A Professional Corporation
2 Scott K. Dauscher, Esq. (State Bar No. 204105)
SDauscher@aalrr.com
3 Dan J. Bulfer, Esq. (State Bar No. 280046)
DBulfer@aalrr.com
4 12800 Center Court Drive South, Suite 300
Cerritos, California 90703-9364
5 Telephone: (562) 653-3200
Facsimile: (562) 653-3333
6 Attorneys for Use-Plaintiff CEMEX CONSTRUCTION
MATERIALS PACIFIC, LLC
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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, for the use
of CEMEX CONSTRUCTION MATERIALS
11 PACIFIC, LLC; and CEMEX
CONSTRUCTION MATERIALS PACIFIC,
12 LLC, a Delaware limited liability company,

13 Plaintiffs,

14 v.

15 ROMERO GENERAL CONSTRUCTION
CORP., a California corporation; THE GRAY
16 INSURANCE COMPANY, a Louisiana
corporation; and JEFFREY ROHRING, an
17 individual,

18 Defendants.
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Case No. 2:14-cv-01469-TLN-KJN

**STIPULATED REQUEST TO DISMISS
PLAINTIFF'S CLAIMS AGAINST
DEFENDANT GRAY INSURANCE
COMPANY WITHOUT PREJUDICE**

Assigned to: Hon. Troy L. Nunley
Courtroom: 2

Complaint Filed: June 19, 2014
Trial Date: None Set

STIPULATION

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2 Use-Plaintiff Cemex Construction Materials Pacific, LLC (“Use-Plaintiff”) and Defendant
3 Gray Insurance Company (“Gray” and collectively with Use-Plaintiff, the “Parties”), by and
4 through their respective counsel of record, hereby stipulate and agree as follows:

5 WHEREAS, Use-Plaintiff filed the above-entitled action against Defendants Romero
6 General Construction Corp., Gray Insurance Company (“Gray”), and Jeffrey Rohring on June 19,
7 2014 and filed its First Amended Complaint against these Defendants on June 20, 2014;

8 WHEREAS, based upon the information then available to it, Use-Plaintiff alleged in its
9 First Amended Complaint that Defendant Gray was liable on a Payment Bond given by Defendant
10 Gray Insurance Company for the protection of all persons supplying labor and materials in the
11 prosecution of a public work of improvement known as Travis Air Base-Parker Road Paving
12 located in Fairfield, California and designated as Contract No. FA4427-11-D-0101 (the “Project”);

13 WHEREAS, Defendant Gray has come forward with evidence satisfactory to Use-Plaintiff
14 indicating that Defendant Gray is not liable on the Payment Bond attached to the First Amended
15 Complaint as Exhibit 2;

16 WHEREAS, Use-Plaintiff and Defendant Gray have met and conferred regarding the
17 content and effect of the aforesaid evidence, and regarding the potential existence of other
18 payment bonds with bearing on this action, and agree that dismissal of Defendant Gray from this
19 action, without prejudice, is proper and in the interest of justice at this time;

20 AND WHEREAS, the Parties make this request not for purposes of delay, nor to hinder the
21 progress of the above-entitled action, but instead to conserve the resources of the Court and the
22 Parties and to promote efficient resolution of the litigation.

23 NOW, THEREFORE, the Parties hereby stipulate and agree that good cause supports this
24 Stipulated Request for Dismissal, and jointly move this honorable Court to order:

25 1. That Use-Plaintiff’s claims against Defendant Gray are dismissed without
26 prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(2), leaving intact Use-Plaintiff’s
27 claims against Defendants Romero General Construction Corp. and Jeffrey Rohring; and
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1 2. That Use-Plaintiff and Defendant Gray shall each bear their own fees and costs of
2 suit as to Use-Plaintiff's claims against Defendant Gray herein. Nothing in this Stipulation shall
3 be deemed a release or waiver of any rights, claims or damages that the Use-Plaintiff or Gray had,
4 has or may have against the remaining defendants in this action, or against any non-party,
5 including but not limited to the recovery of any attorney's fees and costs as permitted by statute or
6 contract.

7 **SO STIPULATED.**

8 Dated: August 18, 2014 ATKINSON, ANDELSON, LOYA, RUUD & ROMO

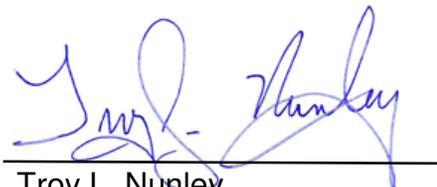
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10 By: /s/ Dan J. Bulfer
11 Scott K. Dauscher, Esq.
12 Dan J. Bulfer, Esq.
13 Attorneys for Use-Plaintiff CEMEX CONSTRUCTION
14 MATERIALS PACIFIC, LLC

15 Dated: August 18, 2014 WOLKIN CURRAN LLP

16 By: /s/ Shauna Szczechowicz (as authorized on August 18, 2014)
17 Shashauna Szczechowicz, Esq.
18 Attorneys for Defendant Gray Insurance Company

19 **IT IS SO ORDERED.**

20 Dated: August 21, 2014

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24 Troy L. Nunley
25 United States District Judge
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