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6 Attorneys for Use Plaintiff

7 BIG B CONSTRUCTION, INC.

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 10 THE UNITED STATES DISTRICT COURT FOR  
 11 THE EASTERN DISTRICT OF CALIFORNIA  
 12 SACRAMENTO DIVISION

13 UNITED STATES OF AMERICA, for the  
 14 use and benefit of BIG B  
 CONSTRUCTION, INC., a California  
 15 corporation,

16 Plaintiff,

17 v.

18 MASCON, INC., a California Corporation,  
 TRAVELERS CASUALTY AND  
 19 SURETY COMPANY OF AMERICA, and  
 DOES 1-10, inclusive,

20 Defendants.  
 21

CASE NO. 2:14-cv-01979-JAM-KJN

**STIPULATION FOR STAY PENDING  
 ARBITRATION; ORDER THEREON**

1 Plaintiff Big B Construction, Inc. ("Big B"), and Defendants Mascon, Inc. ("Mascon"),  
2 and Travelers Casualty and Surety of America ("Travelers") by and through their attorneys of  
3 record, hereby stipulate and agree as follows:

4 1. Mascon was awarded a contract by the United States of America, through the  
5 Department of Army, more particularly identified as Contract No. W91238-12-C-0021 (the  
6 "Prime Contract"), for certain public work of improvements consisting of the construction of a  
7 new Public Safety Center Facility at the Defense Depot Joaquin Complex in Tracy, San Joaquin  
8 County, California (the "Project").

9 2. Under 40 U.S.C. §§ 3131-3133, Mascon, as principal, and Travelers, as surety,  
10 executed and delivered a payment bond, more particularly identified as Bond No. 105755297 (the  
11 "Payment Bond"), guaranteeing the payment of all persons supplying labor and material in the  
12 prosecution of the work provided for in the Prime Contract and any and all duly authorized  
13 modifications thereof. Further, pursuant to the Payment Bond, Mascon and Travelers bound  
14 themselves jointly and severally for the purpose of allowing a joint action or actions against any  
15 or all of them and bound themselves in a sum of money equal to the Prime Contract price.

16 3. On or about September 27, 2012, Big B and Mascon entered into a subcontract  
17 which provided that Big B would furnish labor, material, and equipment to construct cast-in-place  
18 building concrete and site concrete as part of the overall construction of the Project (the  
19 "Subcontract").

20 4. Big B performed work pursuant to the Subcontract. Thereafter, Big B and Mascon  
21 became involved in a dispute over payment and performance of the Work under the Subcontract.

22 5. As a result, Big B filed the above entitled lawsuit against Mascon and Travelers on  
23 or about August 25, 2014, alleging claims for: 1) Recovery on Bond (Miller Act), 2) Breach of  
24 Contract, 3) Account Stated, and 4) Goods and Services Rendered.

25 6. The Subcontract contains an agreement to arbitrate disputes arising out of, or  
26 relating to, the Subcontract. Nevertheless, Big B initiated this lawsuit to secure its rights to make  
27 a claim against Travelers (who is not a signatory to the Subcontract) on the Payment Bond.

28 7. Therefore, Big B, Mascon, and Travelers stipulate and agree that they shall submit

this dispute to mediation and complete mediation before a mutually agreeable mediator within the earlier of the two following dates:

3 A) Sixty days after the Project is physically complete and the United States Department of  
the Army's ("Owner") subsequent contractual "acceptance" of the Project (i.e., when the Owner  
issues its undisputed final change orders, including but not limited to the Owner's compensable  
and/or non-compensable schedule adjustments); or

7 B) Sixty days after March 30, 2015.

8 8. If mediation does not completely resolve all of the issues between the parties, Big  
B, Mascon, and Travelers stipulate and agree that they shall submit this dispute to a mutually  
agreeable arbitrator (through either JAMS or AAA or another service agreed upon by the parties)  
to be arbitrated as a binding arbitration, consistent with the provisions of the Subcontract. The  
agreement on the arbitrator and submission of the matter to binding arbitration, and formal  
initiation of the arbitration, shall occur no later than 30 days after the mediation is completed.  
Even though Travelers is not a signatory to the Subcontract, it expressly agrees, through this  
stipulation, to participate in, and be bound by, the stipulated binding arbitration as set forth in this  
paragraph.

17 9. Big B, Mascon, and Travelers, further stipulate and agree that any statutes of  
limitations applicable to Big B's claims against Mascon or Travelers (regardless of whether  
asserted in this lawsuit) shall be tolled from the date of the filing of the Complaint in this lawsuit  
(August 25, 2014).

21 10. Big B, Mascon, and Travelers further stipulate and agree that this lawsuit should  
be STAYED for all purposes pending arbitration. The parties further agree that the stay shall  
remain in effect until resolution of this dispute by arbitration and pending entry of an arbitrator's  
award in this Court.

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DOWNEY BRAND LLP

DATED: February 9, 2015

DOWNEY BRAND LLP

By: /s/ Sean J. Filippini  
MATTHEW J. WEBER  
SEAN J. FILIPPINI  
Attorneys for Plaintiff BIG B CONSTRUCTION,  
INC.

DATED: February 9, 2015

KENNADAY, LEAVITT & DAPONDE

By: /s/ George Gore (auth'd on 2/9/15)  
GEORGE GORE  
Attorneys for Defendants  
MASCON, INC., and TRAVELERS CASUALTY  
AND SURETY COMPANY OF AMERICA

Good cause appearing, IT IS SO ORDERED.

Dated: 2/9/2015

/s/ John A. Mendez  
John A. Mendez  
U. S. District Court Judge