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 BCP MECHANICAL, LLC

8
 9 UNITED STATES DISTRICT COURT
 10 EASTERN DISTRICT OF CALIFORNIA
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12 UNITED STATES OF AMERICA, for
 13 the use and benefit of BCP
 MECHANICAL, LLC, a California
 14 limited liability company

15 Use-Plaintiff,

16 v.

17 ANDERSON BURTON
 CONSTRUCTION, INC., a California
 18 corporation; WESTERN SURETY
 COMPANY, a South Dakota
 19 corporation,

20 Defendants.

21 AND RELATED CROSS-ACTION.
 22

CASE NO. 2:20-cv-01401-TLN-KJN

**STIPULATION TO AMEND
 SCHEDULING ORDER AND
 ORDER THEREON**

Complaint Filed: July 10, 2020
 Cross-Claim Filed: September 22, 2020
 First Amended Complaint Filed:
 June 24, 2022

Judge: Hon. Troy L. Nunley
 Trial Date: None

23 Pursuant to Federal Rules of Civil Procedure, Rule 16(b)(4), Plaintiff and
 24 Cross-Defendant BCP MECHANICAL, LLC (“BCP”), Defendant and Cross-
 25 Complainant ANDERSON BURTON CONSTRUCTION, INC., (“ABCI”) and
 26 Defendant WESTERN SURETY COMPANY (“Western Surety”; collectively the
 27 “Parties”), by and through their respective counsel of record, hereby stipulate as
 28 follows:

1 WHEREAS on July 10, 2020, BCP filed the instant action for Recovery on
2 Miller Act Payment Bond, Breach of Contract, Quantum Meruit and Open Book
3 Account related to a federal construction project for the U.S. Army Corps of
4 Engineers (the “Action”);

5 WHEREAS on September 22, 2020, ABCI filed a Cross-Claim against BCP
6 for Breach of Written Contract (the “Cross-Claim”);

7 WHEREAS on August 28, 2020, BCP filed a separate action against ABCI
8 and Western Surety in the Superior Court for the County of San Luis Obispo, Case
9 No. 20CV-0388, for Recovery on Payment Bond, Breach of Written Contract,
10 Quantum Meruit, and Open Book Account on five (5) separate construction projects
11 (the “State Court Action”);

12 WHEREAS on July 13, 2020, the Court issued an Initial Pretrial Scheduling
13 Order (“Scheduling Order”) in the instant Action, setting forth dates for close of
14 discovery, expert designation, supplemental expert designations, etc.;

15 WHEREAS on August 10, 2021, the Parties filed a Stipulation to Amend the
16 Scheduling Order to allow the Parties additional time to mediate the claims in the
17 instant Action, the Cross-Claim and the State Court Action;

18 WHEREAS on August 11, 2021, the Court issued an order continuing dates in
19 the Scheduling Order pursuant to the Parties’ Stipulation;

20 WHEREAS on September 22, 2021, the Parties attempted to reach a global
21 settlement of the instant Action, the Cross-Claim and the State Court action through
22 mediation before retired Federal District Court Judge Oliver Wanger. The Parties,
23 however, did not settle at mediation;

24 WHEREAS on December 10, 2021, Plaintiff BCP filed a Motion to Amend
25 the Scheduling Order and for Leave to File Amended Complaint (“Motion”; Doc.
26 23). On December 30, 2021, Defendant ABCI filed its Opposition to the Motion
27 (Doc. 24). On January 3, 2022, the Court issued a Minute Order, vacating the hearing
28 on the Motion, and took the Motion under submission without oral argument;

1 WHEREAS on March 1, 2022, the Parties filed a Stipulation to Amend
2 Scheduling Order, where the amended Scheduling Order dates would be based on
3 the date on which the Court ruled on the Motion (Doc. 27);

4 WHEREAS on March 2, 2022, the Court issued an Order amending the dates
5 in the Scheduling Order pursuant to the Parties' Stipulation (Doc. 28).

6 WHEREAS on June 22, 2022, the Court granted the Motion (Doc. 29);

7 WHEREAS on June 24, 2022, Plaintiff BCP filed its First Amended
8 Complaint (Doc. 30);

9 WHEREAS on July 18, 2022, Defendants ABCI and Western Surety filed
10 their answers to BCP's First Amended Complaint (Docs. 31 and 32);

11 WHEREAS the Parties now recognize that they erred, and the amended
12 scheduling conference dates they requested are problematic. For example, the close
13 of non-expert discovery, expert witness designation, and expert witness designation
14 all fall on the same date, namely September 22, 2022 (i.e., 90 days after the order on
15 the Motion); and

16 WHEREAS the Parties have agreed to an amendment of the Scheduling Order
17 dates to allow the action to proceed in an orderly and efficient manner, and to allow
18 the Parties additional time for discovery related to the allegations in the First
19 Amended Complaint.

20 **STIPULATION**

21 The Parties hereby stipulate to amend the Scheduling Order as follows:

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Description	Current Date	Proposed Dates
23 Close of Non-Expert 24 Discovery	September 22, 2022 (the latter of June 16, 2022, and 90 days after order on Motion)	November 22, 2022
26 Expert Witness 27 Designation	September 22, 2022 (the later of August 22, 2022, and 90 days after order on the Motion)	January 22, 2023

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1 2 3	Supplemental Expert Designation	September 22, 2022 (the later of September 20, 2022, and 90 days after order on the Motion)	February 22, 2023
4 5 6	Supplemental Disclosures & Responses	November 21, 2022 (the later of November 21, 2022, and 90 days after order on the Motion)	April 20, 2023
7 8 9	Dispositive Motion Filing Date	December 22, 2022 (The later of December 22, 2022, and 90 days after order on the Motion)	June 22, 2023
10 11 12	Notice of Trial Readiness	30 days after ruling on last filed dispositive motion or 120 days from close of discovery	The later of July 22, 2023, or 30 days after ruling last filed dispositive motion

13 Dated: August 11, 2022

COLEMAN & HOROWITT, LLP

14
15 By: /s/ Sherrie M. Flynn
16 STEVEN C. CLARK
17 SHERRIE M. FLYNN
Attorneys for Plaintiff & Cross-Defendant, BCP MECHANICAL, LLC

18 Dated: August 11, 2022

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

19
20 By: /s/ Anthony P. Niccoli
21 ANTHONY P. NICCOLI
22 Attorneys for Defendants,
23 ANDERSON BURTON
CONSTRUCTION, INC. and
WESTERN SURETY COMPANY

1 **ORDER**

2 The Parties having stipulated and good cause appearing therefor,

3 **IT IS SO ORDERED** that the Scheduling Order dates are amended as

4 follows:

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Description	Current Date	New Dates
6 Close of Non-Expert Discovery	September 22, 2022	November 22, 2022
7 Expert Witness Designation	September 22, 2022	January 23, 2023
8 Supplemental Expert Designation	September 22, 2022	February 22, 2023
9 Supplemental Disclosures & Responses	November 21, 2022	April 20, 2023
10 Dispositive Motion Filing Date	December 22, 2022	June 22, 2023
11 Notice of Trial Readiness	30 days after ruling on last filed dispositive motion or 120 days from close of discovery	The later of July 24, 2023 , or 30 days after ruling on last filed dispositive motion

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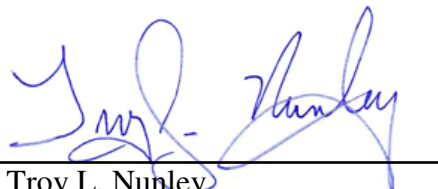
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17 Dated: August 12, 2022

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21 Troy L. Nunley

22 United States District Judge

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