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UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

NADA PACIFIC CORP,

No. C 13-04325 LB

Plaintiff,

**ORDER SETTING CASE
MANAGEMENT CONFERENCE**

v.

POWER ENGINEERING AND
MANUFACTURING, LTD., et al.,

[Re: ECF Nos. 71, 90]]

Defendant

AND RELATED COUNTER- AND CROSS-
CLAIMS

This action arises from the failure of a microtunnel boring machine (the “boring machine”) during a construction project that plaintiff Nada Pacific Corporation (“Nada”) performed for the San Francisco Public Utility Commisison (“SFPUC”). In relation to a construction project, Nada received a subcontract from SFPUC to construct a subsurface tunnel using a microtunnel boring machine. Nada Complaint, ECF No. 6 ¶¶ 7, 14.¹ Nada leased the boring machine used on the project from Akkerman Inc. (“Akkerman”). *Id.* ¶ 20. The boring machine contained a gear box that was designed and manufactured by Power Engineering & Manufacturing, Ltd. (“PEM”). *Id.* ¶ 27. Besser Company (“Besser”) manufactured an iron casting that PEM used to manufacture the gear box. *Id.* The gear box in the boring machine failed, which, according to Nada, caused the boring

¹ Citations are to the Electronic Case File (“ECF”) with pin cites to the electronically-generated page numbers at the top of the document.

1 machine to become immobilized underground. *Id.* ¶¶ 32-33. A rescue shaft had to be constructed to
2 get the boring machine out. *Id.* ¶¶ 38-39.

3 The parties all sued each other. In their case management statement dated August 21, 2014, both
4 PEM and Besser stated that they planned on filing summary judgment motions, *see* 8/21/2014 CMC
5 Statement, ECF No. 69 at 2, but only Besser did. *See* Besser Motion, ECF No. 71. Instead, PEM
6 filed a motion asking the court to determine that its settlement with Nada and Akkerman, which
7 came as a surprise to the court, was made in good faith. *See* PEM Motion, ECF No. 73. Besser
8 opposed PEM's motion, and thereafter PEM filed a notice withdrawing its motion because its
9 settlement with Nada and Akkerman was rescinded. *See* Reply, ECF No. 90.

10 This raises a few issues. Given that PEM planned on filing a summary judgment motion prior to
11 the now-rescinded settlement, the court wonders whether PEM still wishes to do so. If it does, it
12 may be best to hear PEM's motion at the same time as Besser's motion. It also may affect the
13 current case deadlines. To discuss these issues, the court **ORDERS** the parties to meet-and-confer
14 about them and to file a joint case management conference statement no later than **12:00 p.m. on**
15 **Wednesday, October 8, 2014**. The court also **SETS** a Case Management Conference for **11:00**
16 **a.m. on Thursday, October 10, 2014** in Courtroom C, 15th Floor, United States District Court, 450
17 Golden Gate Avenue, San Francisco, California, 94131. The parties are welcome to appear at it
18 through CourtCall, and they may make their own arrangements to do so.

19 **IT IS SO ORDERED.**

20 Dated: October 6, 2014



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22 LAUREL BEELER
23 United States Magistrate Judge
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