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Attorneys for Defendant
DANCO BUILDERS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PHILADELPHIA INDEMNITY
INSURANCE COMPANY,

Plaintiff,

vs.

DANCO BUILDERS and DOES 1 to10,

Defendants.

CASE No. 15-cv-03945-WHO

STIPULATION; ORDER THEREON

**AGREED MOTION AND STIPULATION TO CONTINUE EXPERT
DISCOVERY CUT-OFF DATES**

NOW COME the parties, Plaintiff, PHILADELPHIA INDEMNITY INSURANCE
COMPANY, and Defendant, DANCO BUILDERS, by and through their attorneys, THE

1 COLE LAW FIRM and YARON & ASSOCIATES, move this Court, pursuant to Federal
2 Rules of Civil Procedure 6(b), for an extension of time to the expert witness discovery cut-off.
3 In support of this motion, the parties state and stipulate as follows:

4 1. This negligence lawsuit arises out a fire at an apartment complex at Willow
5 Creek Family Apartments.

6 2. The most recent Order was entered on September 27, 2016, upon agreement of
7 the parties, and consideration of this Court, and continued the Initial Expert Disclosure Date to
8 November 1, 2016 and the Expert Discovery Cut-off to December 1, 2016.

9 3. Plaintiff served a Mediation Statement on DANCO on October 11, 2016. In that
10 statement, Plaintiff sets forth the allegation that the fire spread to the polyethylene deck boards
11 to other portions of the building, and spread throughout the attic due to a lack of the required
12 attic draft stops. DANCO contracted with the drywall subcontractor to install the gypsum draft
13 stops in the attic.

14 4. The parties participated in a Mediation before Michael G. Ornstil at JAMS on
15 October 18, 2016. No resolution was reached.

16 5. The Third Amended Complaint allegation 16: "On December 16, 2013 a tenant
17 at the WILLOW CREEK disposed of a cigarette on the balcony of apartment 524, Building F.
18 Rather than self-extinguishing, the fire ignited the DECKING and engulfed the second level of
19 apartment 524, Building F, and spread to other portions of the building, damaging it."

20 6. After the Mediation, on October 24, 2016, Plaintiff sent to Defendant a proposed
21 4th Amended Complaint, which deleted allegations against Schmidbauer, and added facts to the
22 reason for the fire spread, including the lack of required draft stops in the attic. Defendant
23 declined to stipulate to the filing of the 4th Amended Complaint, and Counsel for the parties
24 met and conferred by several emails, and several telephone conferences, including a telephone
25 conference on November 2, 2016 on Plaintiff's proposed Motion for Leave to File an
26 Amended Complaint.
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28

1 7. On October 27, 2016, Plaintiff served a Supplemental Expert Report of its
2 construction expert, Jeffrey Hughes, which offered opinions that that plans and specifications
3 required attic drop stops, which were not properly installed. Plaintiff's expert, Dr. Vyto
4 Barbrauskas, opined that this was another factor which contributed to the fire spread and
5 subsequent damage at the Willow Creek Apartments, which was incorporated into Plaintiff's
6 proposed 4th Amended Complaint. In Defendant's view, this is a new issue, beyond the
7 central allegation of a defective deck, that is not part of the current operative Third Amended
8 Complaint.

9 8. Plaintiff's Counsel filed a Motion for Leave to File an Amended Complaint on
10 November 9, 2016.

11 9. The parties agree that it makes sense to defer DANCO's expert depositions (all
12 are scheduled, but none have been taken), until the Court adjudicates the Motion for Leave to
13 File an Amended Complaint. Plaintiff suggested DANCO proceed with its taking Plaintiff's
14 three expert witness depositions, by November 30, 2016. All three are scheduled.

15 10. The parties herein, by and through their respective counsel of record, stipulate,
16 agree and request that this Court continue the presently set expert witness discovery date in this
17 case to adequately complete discovery.

18 11. Based on the foregoing, the parties respectfully request an order extending the
19 expert witness deadline to January 6, 2017, the deadline for filing a dispositive motion to
20 February 15, 2017, and the hearing date on dispositive Motions to be held on April 12, 2017.

21 12. The extension proposed by agreement of the parties to this Court would
22 accommodate the remaining expert discovery, based on this Court's adjudication of Plaintiff's
23 Motion for Leave to File an Amended Complaint and would not prejudice any parties.

24 WHEREFORE, considering the foregoing, PHILADELPHIA INDEMNITY
25 INSURANCE COMPANY, the plaintiff in this action, DANCO BUILDERS, the defendant in
26 this action, move this Court to continue expert discovery cut-off- and stipulate and consent, in
27 writing.
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6 Respectfully submitted,

7 Date: _____

8 For the Plaintiff: PHILADELPHIA INDEMNITY INSURANCE COMPANY
9
10

11 By _____
12 STEPHEN N. COLE, Esq.
13 THE COLE LAW FIRM
14 3410 Industrial Blvd., Suite 100
15 West Sacramento, CA 95691
16 Tel: (916) 376-0486

17 Date: _____

18 For the Defendant DANCO BUILDERS
19

20 By _____
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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

PHILADELPHIA INDEMNITY
INSURANCE COMPANY,

Plaintiff,

vs.

DANCO BUILDERS and DOES 1 to10,

Defendants.

CASE No. 15-cv-03945-WHO

**ORDER ON MOTION AND STIPULATION
TO CONTINUE CUT-OFF DATES (Fed. R.
Civ. P. 6(b))**

IT IS ORDERED that:

- a) Expert Discovery Cut-off is continued to January 6, 2017;
- b) Dispositive Motion to be filed by February 15, 2017.
- c) Hearing on Dispositive Motion on April 12, 2017

Dated: November 16, 2016


UNITED STATES DISTRICT JUDGE