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 13 INDEMNITY COMPANY

14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**

17 STEADFAST INSURANCE COMPANY)
 18)
 Plaintiff,)
 19)
 vs.)
 20)
 AMERICAN SAFETY INDEMNITY)
 21 COMPANY, an Oklahoma corporation; and)
 22 DOES 1 to 10, inclusive)
 23 Defendants.)

CASE NO.: C 12-03968 SBA

**PARTIES' STIPULATION AND
~~PROPOSED~~ ORDER TO EXTEND
 DISCOVERY AND DATE FOR
 HEARING DISPOSTIVE MOTIONS**

[Pursuant to L.R. 6-1, 6-2, 7-1 and 7-12]

Judge: Hon. Sandra Brown Armstrong

1 **STIPULATION AND ORDER TO EXTEND DISCOVERY AND DATE FOR**
2 **HEARING DISPOSITIVE MOTION DEADLINES**
3 **(First Request)¹**

4 PURSUANT TO L.R. 6-1, 6-2, 7-1 and 7-12, IT IS HEREBY STIPULATED AND
5 AGREED by and among, plaintiff, Steadfast Insurance Company (“Steadfast”), and defendant,
6 American Safety Indemnity Company (“American Safety”), through their respective attorneys,
7 that the discovery deadlines (general and expert discovery) and the deadline for dispositive
8 motions to be heard (Motion cut-off) be extended for a period of thirty (30) days.

9 **A. Current Discovery and Dispositive Motion Schedule.**

10 On January 31, 2013, this Court issued a “Civil Case Management Conference Minutes”
11 which set forth the following deadlines in this action:

- | | |
|--|---------------------|
| 12 1. General Discovery Cut-off: | September 13, 2013; |
| 13 2. Plaintiff and Defendant to Name Experts: | September 13, 2013; |
| 14 3. Expert Discovery Cut-off: | November 1, 2013; |
| 15 4. All Dispositive Motions to Be Heard (Motion Cut-off): | November 19, 2013 |

16 **B. Discovery Completed To Date.**

17 On October 30, 2013, Steadfast and American Safety served their respective Initial
18 Disclosures. As the parties informed the Court by way of their October 24, 2012 “Joint Case
19 Management Conference Statement,” and January 7, 2013 “Supplemental Joint Case Management
20 Conference Statement,” the parties agreed to produce, without the need for formal discovery,
21 certain categories of documents identified pursuant to Rule 26(a)(1)(A)(ii) in their respective Rule
22 26(f) disclosures. Pursuant to that agreement, Steadfast has made three separate document
23 productions (the most recent on August 9, 2013) and American Safety has made two separate
24 document productions (the most recent on May 3, 2013). Steadfast amended its Initial Disclosures
25 on August 9, 2013.

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27
28 ¹ Pursuant to a “Stipulation and [Proposed] Order” filed with this Court on December 11, 2012, the parties requested
that the deadline to complete Early Neutral Evaluation and amend pleadings or add parties be extended. However, the
parties have not previously requested that the discovery and dispositive motion deadlines be extended.

1 In June 2013, Steadfast served a “Subpoena To Produce Documents” pursuant to Fed. R.
2 Civ. P. 45(c) upon the parties’ insured, CM Concrete, Inc. (“CM Concrete”), as well as upon two
3 separate insurance brokers (Tolman & Wiker Insurance Services and Lemac & Associates, Inc.)
4 whose respective offices are located in Southern California. Both Tolman & Wiker Insurance
5 Services and Lemac & Associates requested extensions of time from Steadfast (until late-July
6 2013) to produce their respective documents in response to the subpoenas.

7 On May 30, 2013, Steadfast served a Request For Production of Documents upon
8 American Safety. It proved necessary for the parties to meet and confer concerning certain
9 categories of documents requested by Steadfast as it was American Safety’s position that the
10 documents were not relevant to Steadfast’s claims and/or contained information that is
11 confidential, privileged and/or otherwise protected. The parties were able to reach an agreement
12 and American Safety produced documents on July 31, 2013.

13 **C. Discovery That Remains to Be Completed.**

14 The parties are scheduled to have completed all general discovery by September 13, 2013.
15 The parties intend to take the deposition of each other’s designated representative(s) as well as
16 third-party witnesses. Steadfast intends to take the deposition of a designated representative(s) of
17 the insurance brokers upon whom subpoenas were served in June 2013, the CM Concrete’s
18 personal defense counsel who was involved in the underlying action as well as a designated
19 representative of the CM Concrete.

20 The parties are also scheduled to serve their expert disclosures on September 13, 2013.
21 The parties intend to retain experts concerning insurance policy interpretation as well as one more
22 construction experts.

23 **D. Purpose of Briefly Extending the Discovery and Dispositive Motion Deadlines.**

24 Following the parties’ completion of the Early Neutral Evaluation program on May 30,
25 2013, the parties continued settlement discussions. Within the last two weeks, the parties have
26 made substantial progress toward partially or fully resolving Steadfast’s claims. With the current
27 September 13, 2013 deadline to complete all general discovery and disclose experts, the parties
28 will need to undertake several depositions and retain experts over the two to three weeks. Because

1 depositions, expert retention and drafting of potentially dispositive motions tend to be the more
2 costly phases of litigation (and because this expense can have a negative impact on the potential
3 for settlement), the parties believe that the grant of a brief extended period of time to continue
4 settlement negotiations before having to undertake this expense will substantially increase the
5 likelihood of full resolution of this case without the need for trial.

6 In addition, as noted above, should a settlement not be achieved, the parties intend to file
7 cross-motions for summary judgment, which will likely decrease the need for trial or greatly limit
8 the scope of trial if settlement is not achieved. Therefore, the parties' request a thirty (30) day
9 extension of the deadline for dispositive motions to be heard by the Court is so that the parties will
10 have sufficient time to prepare and file their respective motions should the Court agree to extend
11 the general and expert discovery deadlines as requested herein, and should settlement not be
12 achieved.

13 **E. Proposed Discovery Deadlines**

- 14 1. General Discovery Cut-off: October 14, 2013;
- 15 2. Plaintiff and Defendant to Names Experts: October 14, 2013;
- 16 3. Expert Discovery Cut-off: December 2, 2013;
- 17 4. All Dispositive Motions to Be Heard (Motion Cut-off): December 19, 2013;

18 Finally, although a trial continuance is not requested, if this Court is inclined to continue
19 the trial date in order to accommodate the requested extension of deadlines, or for any other
20 reason, neither party will object.

21 Respectfully submitted,

23 DATED: August 22, 2013

MORALES, FIERRO & REEVES

25 By: /s/ David A. Astengo
26 RAMIRO MORALES
27 DAVID A. ASTENGO
28 Attorneys for Plaintiff,
STEADFAST INSURANCE
COMPANY

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DATED: August 22, 2013

BLAU & ASSOCIATES, P.C.

By: /s/ Ron Nelson
DAVID S. BLAU
RON NELSON
Attorneys for Defendant,
AMERICAN SAFETY
INDEMNITY COMPANY

PURSUANT TO STIPULATION IT IS SO ORDERED.

Dated: August 28 , 2013.

 Sandra B. Armstrong
UNITED STATES DISTRICT JUDGE