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12 UNITED STATES DISTRICT COURT
 13
 14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 OPERATING ENGINEERS' HEALTH AND
 16 WELFARE TRUST FUND FOR
 NORTHERN CALIFORNIA, et al.,

17 Plaintiffs,

18 v.

19 CENTRAL VALLEY CONSTRUCTION, a
 20 California corporation;

21 Defendant.

Case No.: 17-cv-02365-KAW

**STIPULATION TO CONTINUE
 MEDIATION DEADLINE; [PROPOSED]
 ORDER THEREON**

Magistrate Judge: Kandis A. Westmore

22 The parties in the above-titled action hereby stipulate and respectfully request that the
 23 mediation deadline, currently scheduled for September 28, 2018, be continued for approximately
 24 forty-five (45) days. Good cause exists for the granting of a continuance, as follows:

25 1. As the Court's records will reflect, on July 12, 2017, the parties in this matter filed
 26 a Stipulation agreeing to participate in mediation (Dkt. #13).

1 2. On July 17, 2017, the Court issued an Order (“Order”) referring this matter to
2 mediation (Dkt. #14). Pursuant to the Order, the deadline for the parties to complete mediation
3 was October 11, 2017.

4 3. On August 15, 2017, the Court issued a Notice appointing Geoffrey White as
5 mediator (Dkt. #17).

6 4. On August 28, 2017, the parties participated in a pre-mediation conference call
7 with Mr. White whereby the participants concluded that a mediation date would be set after the
8 parties had a further opportunity to meet and confer.

9 5. Thereafter, the Defendant contacted Plaintiffs’ Auditor and scheduled an audit
10 appointment for October 26, 2017. The Defendant provided Plaintiffs’ Auditor with some
11 documentation necessary to conduct the audit.

12 6. Plaintiffs requested additional documentation that they allege is necessary to
13 complete the audit. Specifically, Plaintiffs allege that the Defendant has failed to provide its cash
14 disbursements journal (or equivalent records) to Plaintiffs’ Auditor. This is standard
15 documentation required for compliance with payroll audits for ERISA Trust Funds. Plaintiffs’
16 Counsel has detailed to Defendant’s Counsel what equivalent alternative documents can be
17 provided. Nevertheless, the requested records still remain outstanding.

18 7. Plaintiffs issued discovery to Defendant’s Counsel on or about May 22, 2018. The
19 discovery requested information that would ordinarily be disclosed by an employer’s cash
20 disbursements journal. No response to the discovery was received.

21 8. Plaintiffs thereafter issued a detailed Meet and Confer letter to Defendant’s
22 Counsel on or about August 2, 2018. The discovery responses remain outstanding and no
23 additional information has been produced by Defendant. In response to the Meet and Confer letter,
24 Defendant’s Counsel only responded that he would forward the letter to his client. Plaintiffs also
25 demanded that Defendant’s Counsel provide his availability for a Meet and Confer telephone
26 conference pursuant to Judge Westmore’s Standing Order. No availability was provided.

27 9. Plaintiffs have now demanded that a Meet and Confer pursuant to Judge
28 Westmore’s Standing Order take place telephonically on October 10, 2018 at 10:00 a.m. If the

1 Meet and Confer is not successful, Plaintiffs' Counsel will demand Defendant's Counsel's
2 participation in the filing of a Joint Discovery Letter Brief to occur within 14 days after the Meet
3 and Confer call.

4 10. Plaintiffs allege that a fruitful mediation session cannot take place until Defendant
5 responds to Plaintiffs' discovery, or informally produces the records requests by Plaintiffs'
6 Counsel and Auditor. **Plaintiffs' Counsel alleges that this dispute likely could not be resolved**
7 **during mediation since it requires the physical production of documents and detailed review**
8 **of the documents by Plaintiffs' Auditor thereafter.** Plaintiffs allege that the Parties will be in
9 the best position to mediate (and will best utilize the mediator's donated time) once Plaintiffs'
10 Auditor has the information necessary to generate an audit report, and meaningful discussions can
11 be had regarding the report itself (and any dispute thereto), and/or the amounts due therein.

12 11. Defendant's counsel alleges that Defendant provided hundreds of pages of bank
13 statements and paid checks to Plaintiffs' counsel to be delivered to the auditor and Defendant is
14 gathering additional documents requested by the audit, none of which involve the three employees
15 utilized on the particular job in issue. Defendant's counsel has been out of his office due to the
16 serious medical condition of his wife and assisting his brother in a regimen of chemotherapy and
17 radiation for Stage 4 esophageal cancer.

18 12. Accordingly, the Parties contend that there is nothing to mediate at the current time
19 and the parties therefore request an extension of the mediation deadline to allow the Parties to
20 Meet and Confer telephonically, as demanded by Plaintiffs' Counsel, to occur on October 10,
21 2018, and to allow time for the filing of a Joint Discovery Letter Brief, to occur within 14 days
22 after the Meet and Confer call.

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