

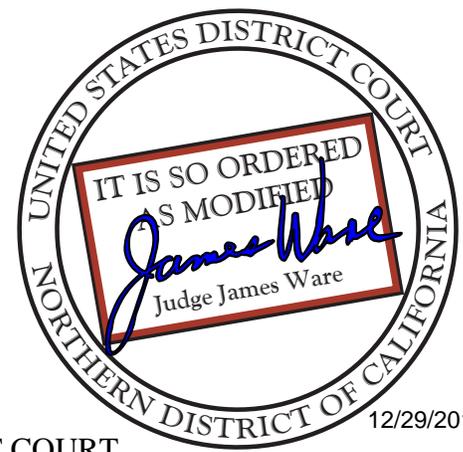
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11
 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN JOSE DIVISION

FENWICK & WEST LLP
 ATTORNEYS AT LAW
 SAN FRANCISCO

15
 16 COATEK, INC.,
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 Plaintiff,
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 v.
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 ITEQ CORPORATION,
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 Defendant.
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Case No. 09-03514 JW

**STIPULATION AND [PROPOSED]
 ORDER TO AMEND DEADLINES SET
 FORTH IN PRELIMINARY PRETRIAL
 CONFERENCE SCHEDULING ORDER**

22
 23 The parties jointly submit this Stipulation and [Proposed] Order to Amend Deadlines Set
 24 Forth in the Preliminary Pretrial Conference Scheduling Order to assist the Court in conforming
 25 the pretrial and trial schedule to recent developments in discovery.
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1 On November 1, 2010, the Court, pursuant to the parties' joint submission, issued a
2 Preliminary Pretrial Conference Scheduling Order [Dkt No. 51] ("Order") setting certain
3 deadlines for pretrial and trial in this action. After that Order issued, ITEQ filed a Motion to
4 Compel discovery from Coatek [Dkt No. 52]. Magistrate Judge Grewal granted ITEQ's Motion
5 on December 15, 2010 as unopposed, and ordered Coatek to produce documents and answer
6 ITEQ's interrogatories no later than January 7, 2011 [Dkt No. 59].

7 Neither party will be prejudiced by this extension of the schedule, nor will the schedule
8 become unreasonably protracted. Only one claim remains to be resolved, on which ITEQ intends
9 to seek resolution by summary judgment after Coatek completes its discovery. On March 3,
10 2010, the Court granted, in part, ITEQ's Motion to Dismiss Coatek's First Amended Complaint
11 [Dkt No. 30], dismissing Coatek's First, Second and Third Causes of Action with prejudice [Dkt
12 No. 35]. On October 20, 2010, the Court granted, in part, ITEQ's Motion for Summary Judgment
13 on its Counterclaims [Dkt Nos. 37; 46]. As a result of the Court's prior orders on ITEQ's
14 Motions, the sole remaining claim in the case is Coatek's Fourth Cause of Action against ITEQ
15 for Breach of Contract. ITEQ plans to move for summary judgment on Coatek's last claim,
16 which if granted would obviate the need for trial. Coatek may also move for summary judgment.
17 Accordingly, the parties propose adding to the schedule a deadline for filing dispositive motions
18 and a hearing date on any such motion.

19 Finally, as the parties informed the Court in its December 10 Stipulation to continue the
20 close of discovery [Dkt No. 58], they remain hopeful that their settlement discussions may end
21 the case.

22 As a result of the January 7, 2011 deadline for Coatek's discovery, ITEQ's intent to seek
23 summary judgment on the single remaining claim if settlement discussions fail to resolve the
24 case, and the parties' ongoing settlement discussions, scheduling adjustments are required to the
25 Order. THEREFORE, the parties ask that the Court ORDER that the "Trial Schedule" section of
26 the November 1, 2010 Preliminary Pretrial Conference Scheduling Order [Dkt No. 51] be
27 replaced in its entirety, and read as follows:
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TRIAL SCHEDULE

Deadline for Filing Dispositive Motions	January 21, 2011
Hearing on Dispositive Motions	February 28, 2011 at 9 a.m.
Final Pretrial Conference at 11 a.m. (¶ 4) (~ 14 days before Jury Selection)	April 25, 2011
Joint Pretrial Conference Statement, In Limine Motions, and Proposed Jury Instructions Due (~30 days before Final Pretrial Conference) Once the in limine binders are lodged with the Court (¶3(b)), the Court will determine whether a hearing is necessary for the motions in advance of the Final Pretrial Conference and set the hearing accordingly.	March 28, 2011
Jury Selection	May 10, 2011 at 9 a.m.
Jury Trial Date and Sessions ¹ Session 1 Session 2 Argue & Submit Jury Deliberations	May 10, 2011 at 1 p.m. - 4 p.m. May 11, 2011 at 1 p.m. - 4 p.m. May 12, 2011 at 1 p.m. May 13, 2011 and May 16-19, 2011, as needed

Pursuant to Civil L.R. 6-2, Defendant ITEQ has filed a concurrent, supporting declaration with this Stipulation.

The parties request that if it would be helpful, the Court schedule a telephonic conference to discuss the proposed new schedule.

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¹ Jury trials are held in afternoon sessions from 1:00pm to 4:00pm, Tuesdays through Fridays unless the Court otherwise specifies. At the Final Pretrial Conference, the Court reserves the right to fold the afternoon sessions into morning sessions (9:00 a.m. - 12:00 p.m.) thus creating full days for trial. The final trial schedule will be confirmed at the Final Pretrial Conference.

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SO STIPULATED:

Dated: December 22, 2010

FENWICK & WEST LLP

By: /s/ Michael A. Sands
Michael A. Sands (CSB NO. 178788)

ANDREWS KURTH LLP
Thomas R. Kline

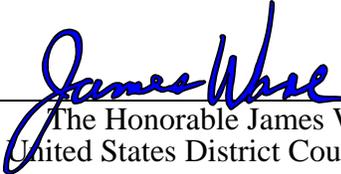
Attorneys for ITEQ Corporation

By: /s/ Gregory Charles
Gregory Charles (CSB No. 208583)

Attorney for Coatek, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: December 29, 2010


The Honorable James Ware
United States District Court Judge

ATTORNEY ATTESTATION

Pursuant to General Order 45, I hereby attest that that concurrence in the filing of this document has been obtained from the signatory indicated by a “conformed” signature (/s/) within this e-filed document.

/s/ Michael A. Sands
Michael A. Sands