

E-Filed: January 28, 2014

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LAW OFFICES
MONTELEONE & McCrORY, LLP
200 West Santa Ana Boulevard, Suite 200
Santa Ana, California 92701
Tele: (714) 565-3170; Fax: (714) 565-3184

WILLIAM J. INGALSBE (CA SBN 66278)
ingalsbe@mmlawyers.com
DIANA M. DRON (CA SBN 86195)
dron@mmlawyers.com

Attorneys for Plaintiff, SAN BENITO SUPPLY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

UNITED STATES OF AMERICA, For the Use)
of SAN BENITO SUPPLY, a California)
corporation,)
)
Plaintiff,)
)
v.)
)
KISAQ-RQ 8A 2 JV, a joint venture;)
FRAZIER MASONRY COMPANY, a)
California corporation; FEDERAL)
INSURANCE COMPANY, an Indiana)
corporation; WESTERN SURETY)
COMPANY, a South Dakota corporation,)
)
Defendants.)

CASE NO. 5:13-CV-00469-HRL

**STIPULATION FOR EXTENSION OF
THE FACT DISCOVERY, EXPERT
DISCLOSURES AND RELATED
REPORTS, EXPERT DISCOVERY,
AND ORDER THEREON**

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff, United States of America, For the Use of San Benito Supply (“San Benito”), by and through its attorneys of record, Monteleone & McCrory, LLP, and Defendants KISAQ-RQ 8A 2 JV, Federal Insurance Company and Western Surety Company (“KISAQ”, “Federal”, and “Western”), and Defendant and Counterclaim Plaintiff Frazier Masonry Corporation (“Frazier”), by and through their attorneys Case, Ibrahim & Clauss, LLP, as follows based on the herein below facts and terms:

///
///

- 1 1. The Fact Discovery cutoff date is currently January 13, 2014;
- 2 2. The last date for the service of expert designations (with reports) is currently
- 3 January 20, 2014;
- 4 3. The last date for the service of rebuttal expert designations (with reports) is
- 5 currently February 3, 2014;
- 6 4. The Expert Discovery cutoff date is currently February 20, 2014;
- 7 5. The Final Pre-Trial Conference is May 25, 2014.
- 8 6. The parties conducted a number of non-party depositions in November 2013. San
- 9 Benito took the depositions of personnel from KISAQ and Frazier.
- 10 7. The depositions of San Benito personnel were set to be taken on January 7, 2014
- 11 through January 10, 2014. Unfortunately, counsel for KISAQ and Frazier was ill and the
- 12 depositions went off calendar. The parties now reset the depositions; they are expected to
- 13 proceed during the period from January 23, 2014 through January 31, 2014. The parties will not
- 14 be able to complete these depositions prior to the current fact discovery cutoff date of January 13,
- 15 2013.
- 16 8. Under 32 CFR §§ 97.6(c), 516.40, and 516.41, the Army must authorize the
- 17 appearance of its personnel or the production of official documents in private litigation. On
- 18 November 12, 2013, pursuant to Department of Defense directives, 32 CFR § 97.6(c), and Army
- 19 regulations, 32 CFR §§ 516.40 - 516.48, San Benito Supply wrote to the Sacramento Office of
- 20 Counsel for the United States Corps of Engineers, requesting permission to take the deposition of
- 21 Karl Mai, the Materials/Architectural Engineer for the Corps on the subject project. Mr. Mai is
- 22 expected to have knowledge on subjects related to the concrete mix designs, submittals regarding
- 23 the concrete, and other facts relevant to the issues in this lawsuit. Mr. Mai has knowledge of
- 24 how the Corps dealt with the submittals for the concrete originally placed as well as the
- 25 replacement concrete utilized, as he is believed to be the person who rejected or approved those
- 26 submittals.

27 ///

28 ///

1 9. San Benito Supply has been in contact with the Office of Counsel for the Corps.
2 On January 8, 2014, permission was given to take the deposition of Mr. Mai on January 13,
3 2014.

4 10. San Benito, Frazier, KISAQ, Federal, and Western (collectively “the Parties”)
5 agree that an additional 30 days are needed to complete the fact discovery and that it would be
6 beneficial to complete the fact discovery prior to the expert disclosures. The Parties agree that all
7 other discovery cutoff dates should be extended by 30 days.

8 11. The Parties, through their attorneys of record, hereby stipulate to the continuance
9 of the Fact Discovery cutoff date from January 13, 2014 to February 13, 2014.

10 12. The parties, through their attorneys of record, hereby stipulate to the continuance
11 of the service of expert designations (with reports) deadline from January 20, 2014 to
12 February 20, 2014.

13 13. The parties, through their attorneys of record, hereby stipulate to the continuance
14 of the rebuttal expert designations (with reports) deadline from February 3, 2014 to March 3,
15 2014.

16 14. The parties, through their attorneys of record, hereby stipulate to the continuance
17 of the Expert Discovery cutoff date from February 20, 2014 to March 20, 2014.

18 15. This stipulation may be executed by fax or email and that fax or email signature
19 will be treated as an original for all purposes.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 16. This stipulation may be executed in counterparts, and that all executed
2 counterparts will be taken together and treated as one full and complete document.

3 **IT IS SO STIPULATED AND AGREED.**

4 DATED: January 14, 2014

MONTELEONE & McCRORY, LLP

6
7 By 

WILLIAM J. INGALSBE

DIANA M. DRON

Attorneys for Plaintiff, SAN BENITO SUPPLY

200 West Santa Ana Blvd., Suite 200

Santa Ana, CA 92701

dron@mmlawyers.com

(714) 565-3170

12 DATED: January 14, 2014

CASE, IBRAHIM & CLAUSS, LLP

13
14 By: 

BRIAN S. CASE

F. ALBERT IBRAHIM

Attorneys for Defendants KISAQ-RQ 8A JV,,

FEDERAL INSURANCE COMPANY AND

WESTERN SURETY COMPANY and

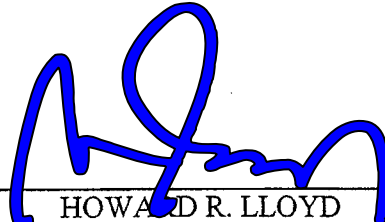
Defendant/Counterclaimant FRAZIER MASONRY

CORPORATION

aibrahim@ciclaw.com

20 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

22 Date: January 28, 2014

21
23 

24 HOWARD R. LLOYD
United States Magistrate Judge