

1 Robert Roos
 Arizona Bar No. 009915
 2 LEWIS ROCA ROTHGERBER CHRISTIE LLP
 201 E. Washington Street, Suite 1200
 3 Phoenix, AZ 85004
 Tel: (602) 262-5311
 4 Email: rroos@lewisroca.com
 (*Admitted pro hac vice*)

5 Erik J. Foley
 Nevada Bar No. 14195
 6 LEWIS ROCA ROTHGERBER CHRISTIE LLP
 3993 Howard Hughes Pkwy, Suite 600
 7 Las Vegas, NV 89169-5996
 8 Tel: (702) 949-8200
 Email: efoley@lewisroca.com

9 *Attorneys for Defendant JE Dunn Construction*
 10 *Company, Federal Insurance Company, Hartford*
Fire Insurance Company, and Travelers Casualty
 11 *and Surety Company of America, Pacific Indemnity Company*

12 **UNITED STATES DISTRICT COURT**
 13 **DISTRICT OF NEVADA**

14 UNITED STATES OF AMERICA, for the use
 and benefit of BOMBARD ELECTRIC, LLC,
 15
 16 Plaintiff,

17 vs.

18 JE DUNN CONSTRUCTION
 COMPANY, a Missouri corporation;
 19 SUSTAINABLE MODULAR
 MANAGEMENT, INC., a Texas corporation;
 20 HARTFORD FIRE INSURANCE COMPANY,
 a surety; TRAVELERS CASUALTY AND
 21 SURETY COMPANY OF AMERICA, a surety;
 FEDERAL INSURANCE COMPANY; a surety;
 22 PACIFIC INDEMNITY COMPANY, a surety;
 23 DOES 1 through 10; and ROE ENTITIES 11
 through 20, inclusive,

24 Defendants.

25 UNITED STATES OF AMERICA, for the use
 and benefit of SUSTAINABLE MODULAR
 26 MANAGEMENT, INC., a Texas corporation,
 27
 28 Plaintiff,

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Case No.: 2:20-cv-00790-JAD-NJK

Consolidated With
 Case No. 2:20-cv-01200-APG-VCF

**JOINT STIPULATION AND ORDER
 TO AMEND DISCOVERY PLAN AND
 SCHEDULING ORDER**

(THIRD REQUEST)

1
2 JE DUNN CONSTRUCTION COMPANY, a
3 Missouri corporation; HARTFORD FIRE
4 INSURANCE COMPANY, a surety;
5 TRAVELERS CASUALTY AND SURETY
6 COMPANY OF AMERICA, a surety;
7 FEDERAL INSURANCE COMPANY, a surety;
8 DOES 1 through 10; and ROE ENTITIES 11
9 through 20, inclusive,
10
11 Defendants.

12 This Stipulation to Amend Discovery Plan and Scheduling Order is made by and between
13 all parties to this consolidated action (United States of America, for the use and benefit of
14 Sustainable Modular Management, Inc. (“SMM”); United States of America, for the use and
15 benefit of Bombard Electric, LLC (“Bombard”); The Sherwin-Williams Company; JE Dunn
16 Construction Company (“JE Dunn”); Harford Fire Insurance Company (“Hartford”); Travelers
17 Casualty and Surety Company of America (“Travelers”); Federal Insurance Company
18 (“Federal”); and Pacific Indemnity Company (“Pacific”)) through their respective counsel.
19 (Collectively, all parties are referred to as “the Parties.”). This is the third stipulation for
20 amendment of the discovery plan and scheduling order.

21 Before addressing the requirements of LR 26-3, the following background information
22 may provide the Court with context to aid it in evaluating the need for this amendment:

- 23 1. This case arises out of a multimillion-dollar construction project concerning the
24 hospital located on Nellis Air Force Base, Nevada (“the Project”). The Parties are
25 the general contractor (JE Dunn), JE Dunn’s subcontractor (SMM), two of
26 SMM’s subcontractors (Bombard and Sherwin Williams), and JE Dunn’s
27 sureties.¹ The Project commenced in mid-2019 and work is still ongoing,
28 although it is nearly complete.
2. To date, the Parties have been cooperating with each other and have engaged in
extensive discovery and disclosure, with voluminous productions by both JE

¹ Bombard and Sherwin Williams have settled with JE Dunn and have assigned claims to JE Dunn. The parties are preparing the stipulations to dismiss Bombard and Sherwin Williams and to substitute JE Dunn in their place.

1 Dunn and SMM. For example, JE Dunn has produced several hundred thousand
2 pages of documents and SMM also has produced a substantial number of
3 documents. The Parties also have conducted twelve depositions through
4 November 10, 2021, and have several more scheduled and contemplated.

- 5 3. SMM and JE Dunn have cooperated with respect to settling the claims of SMM's
6 subcontractors, including the two who have asserted Miller Act claims herein,
7 Bombard and Sherwin Williams. All have reached agreement and have executed
8 settlement agreements. The Parties will be formally notifying the Court of these
9 settlements in the near future and will realign the claims with the remaining
10 parties in accordance with these settlements.
- 11 4. The Parties have agreed to mediate their disputes and had scheduled a mediation
12 for December 20, 2021. However, because the Project is nearing completion, new
13 facts and issues are developing. For example, JE Dunn has just decommissioned
14 the temporary facilities that are the subject of this dispute, and there is
15 disagreement between JE Dunn and SMM concerning the handling, storage and
16 resulting damages involved with those facilities. This development has added
17 issues to the dispute that may require additional expert witnesses. Additionally,
18 SMM requires further third-party discovery before it will be prepared to mediate.
19 Finally, the selected mediator is not available to mediate until April, 2022. The
20 Parties sincerely hope that this dispute can be resolved in mediation and,
21 therefore, do not wish to incur the substantial costs required to prepare expert
22 reports in the event mediation is successful.

23 Accordingly, based on the forgoing, the Parties jointly move the Court to extend the dates
24 for production of expert reports (and the subsequent deadlines in the Scheduling Order) to allow
25 sufficient time for the expert reports to be prepared should mediation fail.

26 ***Local Rule 26-3***

27 Pursuant to LR 26-3, the Parties state the following:

- 28 (a) The following discovery has been completed:

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- 1 1. The Parties submitted their initial disclosures;
- 2 2. SMM propounded Interrogatories and Requests for Production to JE
3 Dunn, to which JE Dunn has responded;
- 4 3. SMM propounded Requests for Production to Travelers, Hartford, and
5 Federal, to which all three have responded;
- 6 4. JE Dunn propounded Interrogatories and Requests for Production to
7 SMM, to which SMM has responded;
- 8 5. Bombard propounded Requests for Admission, Requests for Production,
9 and Interrogatories to JE Dunn and to SMM. However, with SMM's approval, JE Dunn has
10 settled with Bombard and no longer requires responses to its discovery requests; and
- 11 6. The Parties both represent that their respective productions of documents
12 are complete, with the exception of (1) JE Dunn's ongoing damages calculations (as the Project
13 is ongoing), , (2) JE Dunn's response to SMM's second set of requests for production, (3)
14 discovery related to the demobilization and relocation of the temporary facilities, (4) further
15 documents SMM obtains from third parties, and (5) the Parties' ongoing obligation to produce
16 any other document later-discovered and subject to production.
- 17 7. The Parties have conducted thirteen depositions.

18 (b) The following discovery remains to be completed:

- 19 1. The Parties will disclose experts and submit reports for any experts they
20 expect to present at trial;
- 21 2. The Parties will take additional fact and expert depositions; and
- 22 3. The Parties may serve additional third-party subpoenas for documents
23 and/or depositions.

24 (c) The following describes why the remaining discovery cannot be completed under the
25 current schedule:

26 As discussed in detail above, because of scheduling conflicts and the need for additional
27 discovery, the Parties will be unable to conduct the mediation until April, 2022. The Parties
28 remain hopeful that the dispute will settle in mediation. Thus, they seek to avoid the substantial

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1 costs of developing expert reports unless and until required in the event that mediation fails.
 2 Because of the enormous quantity of documents and the complex factual background, expert
 3 witnesses will require about three months to review materials and draft expert reports.
 4 Accordingly, the Parties request to extend the initial deadline for production of expert to July 15,
 5 2022. All subsequent deadlines in the Scheduling Order would adjust accordingly.

6 (d) A proposed schedule for completing all remaining discovery is as follows:

	Old Deadline	New Deadline
Deadline to Amend Pleadings and Add Parties	July 31, 2021	No Change
Parties to designate experts and exchange reports consistent with Rule 26	January 14, 2022	July 15, 2022
Parties to designate rebuttal experts and exchange reports consistent with Rule 26	February 14, 2022	August 15, 2022
Discovery Period Closes	May 13, 2022	November 18, 2022
Dispositive Motion Submittal Deadline	July 15, 2022	January 13, 2023
Parties shall submit a pretrial order (to include the disclosures required by Fed. R. Civ. P. 26(a)(3))	July 29, 2022	February 17 2023

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STIPULATION

NOW, THEREFORE, the Parties hereby stipulate and agree to amend the Discovery Plan and Scheduling Order as described herein.

IT IS SO STIPULATED.

DATED this 23rd day of December, 2021.

MORRIS LAW GROUP

By: /s/ Michael S. Alfred
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101

HALLETT & PERRIN
Michael S. Alfred
1445 Ross Ave, Suite 2400
Dallas Texas 75202
Attorneys for Plaintiff

WILLIAMS STARBUCK

By: /s/ Donald H. Williams
Donald H. Williams, Bar No. 5548
Drew Starbuck, Bar No. 13964
612 So. Tenth Street
Las Vegas, NV 89101
Attorneys for Plaintiff Bombard Electric, LLC

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Erik J. Foley
Erik J. Foley
Nevada Bar No. 14195
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169
*Attorneys for Defendant
JE Dunn Construction Company*

HUTCHISON & STEFFEN, PLC

By: /s/ Tim R. Koval
Joseph R. Ganley, Bar No. 5643
Patricia Lee, Bar No. 8287
Tim R. Koval, Bar No. 12014
Peccole Professional Park
10080 W. Alta Dr.
Las Vegas, NV 89145
Attorneys for The Sherwin-Williams Company

**NO FURTHER EXTENSIONS
WILL BE GRANTED.**

ORDER

IT IS SO ORDERED.



United States Magistrate Judge

DATED December 27, 2021