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 10 PROXIMO SPIRITS, INC., and  
 AGAVERA CAMICHINES, S.A. DE C.V.

11 **UNITED STATES DISTRICT COURT**  
 12 **EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION**

13 \* \* \*

14 E. & J. GALLO WINERY, a California	)	Case No. 1:10-CV-00411 LJO SKO
15 corporation,	)	
	)	<b>STIPULATION FOR AN EXTENSION</b>
16 Plaintiff,	)	<b>OF TIME FOR DEFENDANTS TO FILE</b>
	)	<b>THEIR REPLY MEMORANDUM OF</b>
17 v.	)	<b>LAW IN SUPPORT OF THEIR MOTION</b>
	)	<b>TO DISMISS AND FOR A ONE WEEK</b>
18 PROXIMO SPIRITS, INC., a Delaware	)	<b>CONTINUANCE OF THE HEARING RE</b>
19 Corporation; AGAVERA CAMICHINES,	)	<b>SAME</b>
20 S.A. DE C.V., a Mexican corporation,	)	<b>AND ORDER THEREON</b>
and DOES 1 – 25,	)	
21 Defendants.	)	Date: August 24, 2010
	)	Time: 8:30 a.m.
	)	Ctrm: 4 (Hon. Lawrence J. O’Neill)
	)	
	)	Action Filed: March 8, 2010
	)	
	)	Trial Date: TBD

25 WHEREAS, on July 26, 2010, Defendants PROXIMO SPIRITS, INC. and  
 26 AGAVERA CAMICHINES, S.A. DE C.V. (“Defendants”), filed a motion to dismiss this action  
 27 pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), setting a hearing date of August 24, 2010;

28 **STIPULATION FOR AN EXTENSION OF TIME FOR DEFENDANTS TO FILE THEIR REPLY MEMORANDUM OF LAW IN SUPPORT  
 OF THEIR MOTION TO DISMISS AND FOR A ONE WEEK CONTINUANCE OF THE HEARING RE SAME  
 AND PROPOSED ORDER THEREON**

1 WHEREAS, on August 10, 2010, Plaintiff E. & J. Gallo Winery (“Plaintiff”) filed  
2 its opposition to the motion to dismiss;

3 WHEREAS, Defendants’ reply memorandum is currently due to be filed on  
4 August 17, 2010, and oral argument on the motion has been set for August 24, 2010;

5 WHEREAS, one of Defendants co-lead counsel has suffered significant leg and  
6 knee injuries in a motor vehicle accident, and another co-lead counsel has a foot injury that has  
7 required his being out of the office for several days in the past week while receiving such  
8 treatment;

9 WHEREAS, Plaintiff filed significant opposition papers (19 separate .PDF files)  
10 that require substantial time and effort in formulating a reply which is not available to  
11 Defendants’ counsel given the present circumstances;

12 WHEREAS, Plaintiff’s counsel has indicated that it would not object to an  
13 extension of the reply and hearing dates of not longer than one week upon a showing of good  
14 cause by Defendants to the satisfaction of the court; and

15 WHEREAS, Defendants submit the above facts establish good cause for the  
16 requested extension of one week, which is not expected to significantly impact the timing of this  
17 case, and there have been no prior requests for extensions by the parties with respect to this  
18 motion.

19 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED, AND  
20 AGREED TO by and between the parties, that the time for Defendants to file their Reply  
21 Memorandum of Law (and any supporting documentation) in Support of Their Motion to  
22 Dismiss the Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) shall be extended from  
23 **August 17, 2010** to and including **August 24, 2010**.

24 IT IS FURTHER STIPULATED, CONSENTED, AND AGREED TO by and  
25 between the parties, that the hearing which has been set by the Court for argument on  
26 Defendants Motion to Dismiss for **August 24, 2010** shall be rescheduled with the Court’s  
27 permission to **August 31, 2010 at 8:30am**.

28 STIPULATION FOR AN EXTENSION OF TIME FOR DEFENDANTS TO FILE THEIR REPLY MEMORANDUM OF LAW IN SUPPORT  
OF THEIR MOTION TO DISMISS AND FOR A ONE WEEK CONTINUANCE OF THE HEARING RE SAME  
AND PROPOSED ORDER THEREON

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DATED: August 16, 2010

Respectfully submitted,

KIMBLE, MacMICHAEL & UPTON  
Mark D. Miller

ABELMAN FRAYNE & SCHWAB

\_\_\_\_\_/ Anthony A. Coppola/  
Michael Aschen  
Anthony A. Coppola

*Attorneys for Defendants*

- and -

Respectfully submitted,

McCORMICK, BARSTOW, SHEPPARD,  
WAYTE & CARRUTH LLP

\_\_\_\_\_/D. Greg Durbin/  
D. Greg Durbin  
Daniel S. Cho

HARVEY SISKIND LLP  
D. Peter Harvey  
Seth I. Appel

*Attorneys for Plaintiff*

**IT IS SO ORDERED.**

Dated: August 16, 2010

/s/ Lawrence J. O'Neill\_\_\_\_\_  
LAWRENCE J. O'NEILL  
UNITED STATES DISTRICT JUDGE