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MP NEXLEVEL OF CALIFORNIA, INC.

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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10 **FRESNO DIVISION**

11 MP NEXLEVEL OF CALIFORNIA, INC.,
12 Plaintiff,
13 v.
14 APEX DIRECTIONAL DRILLING, LLC,
15 Defendant.

Case No. 1:14-CV-00857-BAM

**STIPULATION AND ORDER TO
RESCHEDULE RULE 26(f)
CONFERENCE CURRENTLY SET FOR
AUGUST 25, 2014**

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17 Plaintiff MP Nexlevel of California, Inc. and Defendant Apex Directional Drilling, LLC,
18 through their attorneys of record, stipulate as follows:

19 1. The parties are currently scheduled to appear before the Court for a Mandatory
20 Scheduling Conference on Tuesday, August 26, 2014 at 9:00 a.m. (see docket entry 2).

21 2. The Court's June 6, 2014 order setting the Mandatory Scheduling Conference also
22 requires that the parties meet and confer on the items set forth in the order no later than 20 days
23 prior to the hearing, or August 6, 2014 (see docket entry 2).

24 3. Plaintiff MP Nexlevel of California's ("MP Nexlevel") complaint in this matter
25 was served on Defendant Apex Direction Drilling, LLC ("Apex") on June 6, 2014 (see docket
26 entry 4).

27 4. Pursuant to the stipulation of the parties, Apex's answer to the complaint is not due
28 until July 25, 2014 (see docket entry 5).

1 5. Because of the agreed-to extension of Apex’s deadline to answer MP Nexlevel’s
2 Complaint, and due to the complex factual and legal issues presented by this case, the parties will
3 not be prepared to meaningfully meet and confer on all the items outlined in the Court’s June 6,
4 2014 Order by the August 6, 2014 deadline to conduct that meeting.

5 6. Therefore, MP Nexlevel and Apex hereby stipulate, and request that the Court
6 order, that the August 26, 2014 Mandatory Scheduling Conference be rescheduled for a date
7 ideally no earlier than September 15, 2014.

8 7. Rule 16(b)(2) of the Federal Rules of Civil Procedure requires that a scheduling
9 order be issued “within the earlier of 120 days after any defendant has been served with the
10 complaint or 90 days after any defendant has appeared.” 120 days after the June 6, 2014 service
11 of MP Nexlevel’s complaint on Apex is October 3, 2014. If the June 26, 2014 filing of the
12 parties’ stipulation extending Apex’s time to answer is counted as an “appearance” for the
13 purposes of Rule 16(b)(2), 90 days thereafter is September 24, 2014. Therefore, the parties’
14 request does not violate the scheduling requirements set by Rule 16.

15 IT IS SO STIPULATED

16
17 Dated: July 28, 2014

**WILSON, ELSER, MOSKOWITZ, EDELMAN &
DICKER LLP**

/s/ Ben Patrick

Ben Patrick, Esq. (SBN 244092)
Attorneys for Plaintiff
MP NEXLEVEL OF CALIFORNIA, INC.

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22 Dated: Authorized July 21, 2014

WOOD, SMITH, HENNING & BERMAN LLP

/s/ Patrick Schoenburg

David F. Wood, Esq. (SBN 68063)
Patrick S. Schoenburg, Esq. (SBN 162842)
Attorneys for Defendant
APEX DIRECTIONAL DRILLING, LLC

1 **ORDER**

2 Having reviewed the parties Stipulation, IT IS HEREBY ORDERED that the mandatory
3 Scheduling Conference is continued from August 26, 2014 to **October 15, 2014 at 8:30 a.m** in
4 Department 8, before Judge Barbara A. McAuliffe.

5 The telephonic status conference to discuss the procedures in light of the Sacramento
6 designation and Magistrate Judge jurisdiction set for **August 5, 2014 at 10:00 a.m.** shall remain
7 on calendar as set.

8 IT IS SO ORDERED.

9 Dated: **July 28, 2014**

10 */s/ Barbara A. McAuliffe*
11 UNITED STATES MAGISTRATE JUDGE