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18 GRAYBAR ELECTRIC COMPANY, INC.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THE MOUNTAIN CLUB OWNER'S
ASSOCIATION,

Plaintiff,

v.

GRAYBAR ELECTRIC COMPANY, INC.,

Defendant

Case No.: 2:13-CV-01835-WBS-KJN

**STIPULATION AND [PROPOSED]
ORDER GRANTING GRAYBAR
ELECTRIC COMPANY, INC. LEAVE TO
FILE THIRD-PARTY COMPLAINT
AGAINST GENERAL CABLE
CORPORATION**

29 COMES NOW, Plaintiff, The Mountain Club Owners Association ("Plaintiff"),
30 and Defendant, Graybar Electric Company, Inc. ("Defendant" or "Graybar"), by and
31 through their respective undersigned counsel, and stipulate as follows for an order granting
32 Graybar leave to file its [Proposed] Third-Party Complaint against General Cable
33 Corporation ("General Cable").

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1 WHEREAS, this is a products-liability, manufacturing-defect case in which Plaintiff
2 claims Graybar distributed an allegedly defective electric cable that, according to Plaintiff, caused
3 a fire on its property. (*See* Second Amend. Compl. (Doc. #: 40), at ¶¶ 8-11.)

4 WHEREAS, based on information recently learned through discovery, Graybar now seeks
5 leave to implead General Cable Corporation (“General Cable”), the manufacturer of the subject
6 cable, as a third-party defendant under the doctrine of equitable indemnity. (*See* Graybar’s
7 [Proposed] Third-Party Complaint against General Cable Corporation, attached hereto as
8 Exhibit A.)

9 WHEREAS, FEDERAL RULE OF CIVIL PROCEDURE 14(a)(1) provides that a defending party
10 may, as a third-party plaintiff, implead a nonparty “who is or may be liable to [the defending
11 party] for all or part of the plaintiff’s claim against it.”

12 WHEREAS, “the decision whether to implead a third-party defendant is addressed to the
13 sound discretion of the trial court” (*Sw. Administrators, Inc. v. Rozay’s Transfer*, 791 F.2d 769,
14 777 (9th Cir. 1986)) and, in exercising such discretion, courts consider four factors: “1) prejudice
15 to the original plaintiff; 2) complication of issues at trial; 3) likelihood of trial delay; and
16 4) timeliness of the motion to implead.” *Paradise Nw. Inc. v. Randhawa*, No. 2:09CV02027 MCE
17 DAD, 2010 WL 1487874, at *1 (E.D. Cal. Apr. 13, 2010).

18 WHEREAS, impleader of General Cable as a third-party defendant is proper under FED. R.
19 Civ. P. 14(a) because General Cable’s liability to Graybar under the doctrine of equitable
20 indemnity is derivative of Graybar’s alleged liability to Plaintiff. *See American Motorcycle Assn.*
21 *v. Superior Court*, 20 Cal. 3d 578, 582-84 (1978).

22 WHEREAS, in his November 24, 2014 Stipulation & Order, Magistrate Judge Newman,
23 based on the parties’ following stipulation, established February 27, 2015, as the deadline for
24 joining nonparties:

25 [I]t is agreed that, to allow the parties to continue their respective investigations
26 and conduct additional discovery to identify the manufacturer of the electric
27

1 cable, the deadline for joining parties and amending the pleadings be continued to
2 February 27, 2015

3 (See Doc. #: 44, at 4.)

4 WHEREAS, Graybar, by the instant Stipulation and [Proposed] Order, timely seeks leave
5 to implead General Cable before the February 27, 2015 deadline.

6 WHEREAS, Plaintiff does not object to the impleader of General Cable and the parties
7 have not yet exchanged expert reports or conducted depositions.

8 WHEREAS, because Graybar's proposed claims against General Cable are based on
9 Plaintiff's allegations against Graybar (*compare* Pl.'s Second Amend. Compl. (Doc. #: 40) at ¶¶ 8-
10 20, *with* Graybar's [Proposed] Third-Party Compl. at ¶¶ 10-20), the impleader of General Cable
11 will not unduly complicate issues at trial or inject extraneous issues into the action.

12 NOW THEREFORE, Plaintiff and Graybar stipulate and respectfully request that the
13 Court enter an order granting Graybar leave to file the attached [Proposed] Third-Party Complaint
14 against General Cable Corporation.

15
16 Dated: January 30, 2015 STOEL RIVES LLP

17
18 By: /s/ Michael B. Brown
19 MICHAEL B. BROWN
Attorney for Defendant, GRAYBAR ELECTRIC
COMPANY, INC.

20 Dated: January 30, 2015 FORAN GLENNON PALANDECH PONZI &
21 RUDLOFF PC

22
23 By: /s/ Diana R. Lotfi (as approved via email on 01-30-15)
24 DIANA R. LOTFI
Attorney for Plaintiff, THE MOUNTAIN CLUB
OWNER'S ASSOCIATION

ORDER

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IT IS SO ORDERED THAT, good cause having been show and on stipulation of the parties, the Court hereby grants Defendant Graybar Electric Company, Inc. leave to file its [Proposed] Third-Party Complaint against General Cable Corporation within ten (10) days from the date of this Order.

Dated: February 2, 2015



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE