

1 CHARLES M. DYKE (CA State Bar No. 183900)  
 2 [cdyke@nixonpeabody.com](mailto:cdyke@nixonpeabody.com)  
 3 GREGORY E. SCHOPF (CA State Bar No. 122862)  
 4 [gschopf@nixonpeabody.com](mailto:gschopf@nixonpeabody.com)  
 5 MATTHEW J. FRANKEL (CA State Bar No. 256633)  
 6 [mfrankel@nixonpeabody.com](mailto:mfrankel@nixonpeabody.com)  
 7 NIXON PEABODY LLP  
 8 One Embarcadero Center, Suite 1800  
 9 San Francisco, CA 94111-3996  
 10 Telephone: (415) 984-8200  
 11 Facsimile: (415) 984-8300

12 Attorneys for Plaintiff  
 13 HERTZ EQUIPMENT RENTAL COMPANY

14 JAMES E. SELL (CA State Bar No. 135935)  
 15 [jsell@partonsell.com](mailto:jsell@partonsell.com)  
 16 Parton | Sell | Rhoades  
 17 A Professional Corporation  
 18 750 Lindaro St., Suite 140  
 19 San Rafael, CA 94901  
 20 Telephone: (415) 258-9700  
 21 Facsimile: (415) 258-9739

22 Attorneys for Defendant  
 23 FRED KICENSKI

24 UNITED STATES DISTRICT COURT  
 25 NORTHERN DISTRICT OF CALIFORNIA  
 26 SAN FRANCISCO DIVISION

27 HERTZ EQUIPMENT RENTAL COMPANY, a  
 28 Delaware corporation,

Plaintiff,

v.

RAMON USEDA, FRED KICENSKI, and DOES  
 1 through 20,

Defendants.

Case No.: 3:10-cv-4953-WHA

**STIPULATION AND ~~PROPOSED~~ ORDER  
 REGARDING EXTENSION OF  
 TEMPORARY RESTRAINING ORDER,  
 CONTINUANCE OF PRELIMINARY  
 INJUNCTION HEARING, AND  
 DISCOVERY AS TO DEFENDANT FRED  
 KICENSKI**

Date of Filing: November 2, 2010  
 Trial Date: None set

1 Pursuant to Local Rules 6-2, 7-12 and 65-1(c), and Fed. R. Civ. P. 65(b)(2), Plaintiff Hertz  
2 Equipment Rental Corporation (“HERC”) and Defendant Fred Kicenski (“Kicenski”), by and through  
3 their respective counsel, hereby stipulate and request that the Court enter an order as follows:

4 1. WHEREAS, on November 2, 2010, the Court granted Plaintiff Hertz Equipment  
5 Rental Corporation’s *Ex Parte* Motion for (1) Temporary Restraining Order; (2) Order to Show  
6 Cause re Preliminary Injunction; and (3) Expedited Discovery as to Kicenski by Order entered that  
7 day (the “Order”);

8 2. WHEREAS, the Order set the preliminary injunction hearing with respect to Kicenski  
9 for November 18, 2010, at 8:00 a.m.;

10 3. WHEREAS, HERC served the Order and all supporting papers on Defendant Fred  
11 Kicenski (“Kicenski”) on November 2, 2010;

12 4. WHEREAS, Counsel for Kicenski, James Sell of Parton Sell Rhoades, contacted  
13 counsel for HERC, Charles Dyke of Nixon Peabody LLP, on or about November 3, 2010, and  
14 counsel thereafter discussed the timing and substance of further proceedings in this matter, including  
15 discovery;

16 5. WHEREAS, in light of these discussions, Kicenski and HERC believe that a short  
17 continuance of the preliminary injunction hearing will (a) permit both Kicenski and HERC to conduct  
18 necessary discovery in advance of the hearing; (b) permit HERC and Kicenski to prepare more  
19 effective and complete papers in support of their respective positions; and (c) further the interests of  
20 justice.

21 6. NOW, THEREFORE, KICENSKI AND HERC STIPULATE and agree to, and  
22 respectfully request that the court enter, the following order:

23 (a) The hearing on the preliminary injunction currently scheduled for November  
24 18, 2010, shall be continued to December 2, 2010 at 8:00 a.m.

25 (b) Kicenski shall file any papers in opposition to the preliminary injunction by  
26 noon on November 19, 2010. HERC shall file any reply papers by noon on  
27 November 25, 2010.

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

- (c) The deposition of Fred Kicenski shall go forward as currently set for Friday, November 12, 2010, at 9:30 a.m. at the offices of Nixon Peabody LLP in San Francisco.
  
- (d) Kicenski’s counsel shall (i) email to HERC’s counsel copies of Kicenski’s responses to HERC’s Interrogatories (Set One) and Requests for Production of Documents (Set One), (ii) serve the original responses by regular mail, and (iii) serve by hand delivery any responsive documents, no later than 5:00 p.m. on November 11, 2010.
  
- (e) HERC shall produce Mark Hobson and James Herlitz for deposition no later than November 17, 2010, at the offices of Nixon Peabody LLP in San Francisco or at such other location as Kicenski and HERC may mutually agree.

///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///

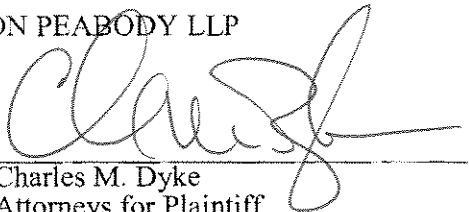
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(f) The Court's November 2, 2010 Order shall otherwise remain in full force and effect until the conclusion of the preliminary injunction hearing.

IT IS SO STIPULATED.

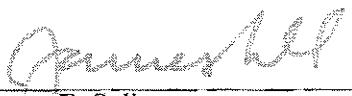
DATED: November 8, 2010

NIXON PEABODY LLP

By:   
Charles M. Dyke  
Attorneys for Plaintiff  
HERTZ EQUIPMENT RENTAL  
CORPORATION


DATED: November 8, 2010

PARTON SELL RHOADES

By:   
James E. Sell  
Attorneys for Defendant  
FRED KICENSKI

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: November 9, 2010.

  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE