

1 Gregory J. Vogler (*pro hac vice*)
 Email: gvogler@mcandrews-ip.com
 2 Robert A. Surrette (*pro hac vice*)
 Email: bsurrette@mcandrews-ip.com
 3 Merle S. Elliott (*pro hac vice*)
 Email: melliott@mcandrews-ip.com
 4 Caroline A. Teichner (*pro hac vice*)
 Email: cteichner@mcandrews-ip.com
 5 McANDREWS, HELD & MALLOY, LTD.
 500 West Madison Street, 34th Floor
 Chicago, Illinois 60661
 6 Telephone: (312) 775-8000
 Facsimile: (312) 775-8100
 7

8 William R. Overend (SBN 180209)
 Email: woverend@reedsmith.com
 REED SMITH LLP
 9 101 Second Street, Suite 1800
 San Francisco, California 94105-3659
 10 Telephone: (415) 543-8700
 Facsimile: (415) 391-8269
 11

12 Attorneys for Defendants,
 STRYKER CORPORATION and
 STRYKER COMMUNICATIONS, INC.
 13

14
 15 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 16 **SAN FRANCISCO DIVISION**

17 KARL STORZ ENDOSCOPY-)
 AMERICA, INC.,)
 18)
 19 Plaintiff,)
)
 20 v.)
)
 21 STRYKER CORPORATION and)
 STRYKER COMMUNICATIONS, INC.,)
 22)
 23 Defendants.)

Case No. CV RS

[CORRECTED] STIPULATION AND
~~**[PROPOSED] ORDER TO HEAR**~~
PLAINTIFF'S MOTION TO STRIKE
AND DISMISS ON SHORTENED TIME

24
 25
 26
 27
 28

1 Pursuant to Civil Local Rules 6-1(b), 6-2 and 7-12 Plaintiff Karl Storz Endoscopy-America,
2 Inc. (“KSEA”) and Defendants Stryker Corporation and Stryker Communications, Inc. (collectively,
3 “Stryker”), by and through their respective undersigned counsel, hereby stipulate to and jointly
4 request an Order to abbreviate the briefing schedule and shorten the notice period to hear KSEA’s
5 anticipated motion to dismiss directed to Stryker’s recently Amended Answer and Counterclaims
6 (Dkt. No. 82). The accompanying declaration of Robert Surrette sets forth all requirements of Civil
7 Local Rule 6-2 including identifying all previous time modifications in the case. For the Court’s
8 convenience, the parties will not repeat all information contained in Mr. Surrette’s declaration but the
9 parties do note as follows:

10 1. On August 1, 2014, KSEA filed two motions: (a) a Motion to Strike and Dismiss with
11 Prejudice Defendant’s Affirmative Defenses and Counterclaims to Amended Complaint Based on
12 Alleged Violation of a Protective Order (Dkt. No. 76); and (b) a Motion to Strike and Dismiss with
13 Prejudice Defendant’s Affirmative Defenses and Counterclaims to Amended Complaint Based on
14 Settlement Agreement (Dkt. No. 77). On August 11, the parties filed a Stipulation and Proposed
15 Order to continue the hearing on those motions until September 25, 2014, and to set a briefing
16 schedule accordingly. (Dkt. No. 79.) The Court granted that Stipulation on August 11, 2014. (Dkt.
17 No. 80.)

18 2. On August 22, 2014, Stryker filed a First Amended Answer and Counterclaims in
19 response to KSEA’s Amended Complaint. (Dkt. No. 82.) Because that amended pleading no longer
20 asserted a claim against KSEA for breach of Protective Order, KSEA filed a notice of withdrawal of
21 its Motion to Strike and Dismiss with Prejudice Defendant’s Affirmative Defenses and
22 Counterclaims to Amended Complaint Based on Alleged Violation of a Protective Order (Dkt. No.
23 76). (Dkt. No. 84.)

24 3. Based on meet and confer discussions between the parties, and in the interests, among
25 other things, of having KSEA’s motion to dismiss directed to the operative pleading in the case, on
26 August 28, 2014 KSEA filed a Notice (Dkt. No. 85) withdrawing its Motion to Strike and Dismiss
27 with Prejudice Defendant’s Affirmative Defenses and Counterclaims to Amended Complaint Based
28 on Settlement Agreement (Dkt. No. 77) and noted it expected to file a new motion to strike and

1 dismiss directed to the newly-filed First Amended Answer and Counterclaims. In the interests of
2 having that new motion heard as expeditiously as possible, the parties hereby stipulate to and request
3 to abbreviate the briefing schedule and shorten the time to hear that motion. The parties note that
4 their proposed schedule below still allows the Court two weeks between the time the reply brief is
5 filed and the motion is heard, as would usually be the case under the Local Rules. Accordingly, the
6 parties hereby stipulate to and request the following schedule:

- 7 a. September 4, 2014: Last day for KSEA to file a new Motion to Strike and Dismiss
8 with Prejudice Defendant's Affirmative Defenses and Counterclaims to Amended
9 Complaint Based on Settlement Agreement.
- 10 b. September 11, 2014: Last day for Stryker to file and serve any Opposition to
11 KSEA's new motion to strike and dismiss.
- 12 c. September 18, 2014: Last day for KSEA to file and serve any reply brief in
13 support of its new motion to strike and dismiss.
- 14 d. October 2, 2014, at 1:30 p.m.: Hearing on KSEA's new motion to strike and
15 dismiss.

16 4. These stipulated schedule changes will not alter any other deadlines currently set by
17 the Court.

18 5. Pursuant to Civil Local Rule 6-2(a), this stipulation is accompanied by the Declaration
19 of Robert A. Surrette setting forth (1) the reasons for the requested enlargement of time; (2) all
20 previous time modifications in this case; and (3) the effect of the requested enlargement of time.

21 Respectfully submitted,

22
23 Dated: August 29, 2014

REED SMITH LLP

24
25 /s/ William R. Overend¹
26 William R. Overend (SBN 180209)
27 Attorneys for Defendants,
STRYKER CORPORATION and
STRYKER COMMUNICATIONS, INC.

28 ¹ In compliance with Civil Local Rule 5-1(i), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories hereto.

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

Dated: August 29, 2014

BECK, BISMONTE & FINLEY, LLP


/s/ Alfredo A. Bismonte
Alfredo A. Bismonte
Attorneys for Plaintiff,
KARL-STORZ ENDOSCOPY AMERICA, INC.

~~[PROPOSED]~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED:

- KSEA has until September 4, 2014 to file and serve a new Motion to Strike and Dismiss with Prejudice Defendant's Affirmative Defenses and Counterclaims to Amended Complaint Based on Settlement Agreement;
- Stryker has until September 11, 2014 to file and serve any Opposition to KSEA's new motion to strike and dismiss;
- KSEA has until September 18, 2014 to file any reply brief in support of KSEA's new motion to strike and dismiss; and
- The hearing on KSEA's new motion to strike and dismiss will be set for October 2, 2014, at 1:30 p.m.

Dated: 9/2, 2014



Honorable Richard G. Seeborg
United States District Judge