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 MAYHEW CENTER, LLC AND DEAN DUNIVAN  
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16 **IN THE UNITED STATES DISTRICT COURT**  
 17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18  
 19 WALNUT CREEK MANOR, LLC,

20 Plaintiff,

21 v.

22 MAYHEW CENTER, LLC, a California limited  
 liability company; Dean Dunivan, an individual;  
 23 Etch-Tek, Inc., a former California corporation; and  
 DOES 1-50, inclusive,

24 Defendants.  
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Case No.: C 07 5664 CW

**STIPULATION AND ORDER ON  
 FILING DEADLINE FOR WALNUT  
 CREEK MANOR LLC'S AFFIDAVITS  
 AND OPPOSITION TO MC'S  
 MOTIONS FOR NEW TRIAL AND/OR  
 TO ALTER OR AMEND JUDGMENT**

1 MAYHEW CENTER, LLC, a California limited  
2 liability company; and DEAN DUNIVAN, an  
3 individual,

4 Cross-Claimants,

5 v.

6 WALNUT CREEK MANOR, LLC,

7 Cross-Defendant.

Date: December 3, 2009

Time: 2pm

Ctrm: 2, 4<sup>th</sup> Floor

Judge: Hon. Claudia Wilken

First Amended

Complaint Filed: May 19, 2008

8  
9 **STIPULATION**

10 WHEREAS, on October 19, 2009, Mayhew Center LLC and Dean Dunivan (collectively,  
11 “MC”) filed a Motion for New Trial under FRCP 59 (docket # 183), and a Motion to Alter or Amend  
12 the CERCLA Judgment under FRCP 52 (docket # 185).

13 WHEREAS, MC has calendared the above-referenced motions for hearing on December 3,  
14 2009.

15 WHEREAS, Local Rule 7-3 provides that oppositions, including opposing affidavits, to  
16 noticed motions must be filed no later than 21 days before the hearing, which based on the  
17 December 3 hearing date, is November 12, 2009;

18 WHEREAS, Federal Rule of Civil Procedure, Rule 59, under which MC moves for new trial,  
19 provides that “opposing affidavits” must be filed as follows:

20 When a motion for a new trial is based on affidavits, they must be filed  
21 with the motion. The opposing party has 10 days after being served to  
22 file opposing affidavits; but that period may be extended for up to 20  
23 days, either by the court for good cause or by the parties' stipulation.  
24 The court may permit reply affidavits.

25 FRCP 59(c).

26 WHEREAS, FRCP 52, under which MC moves for an order altering and/or amending the  
27 judgment, does not specify a time limit for filing opposing papers and/or affidavits;

28 WHEREAS, a potential conflict exists between the Local Rule 7-3 and FRCP 59(c) as to the  
due dates for opposing affidavits and other opposing papers;

WHEREAS, to address this potential conflict and to avoid potential piecemeal filing of

1 affidavits and opposition briefs, the parties enter into the following stipulation and agreement.

2 NOW THEREFORE it is stipulated and agreed by and among Plaintiff and Defendants, by  
3 and through their undersigned counsel, as follows:

4 1. The due date for WCM's memoranda in opposition to MC's Motion for New Trial  
5 under FRCP 59 and Motion to Alter or Amend the CERCLA Judgment under FRCP 52, as well as  
6 any opposing affidavits, are by agreement extended to November 12, 2009.

7 SO STIPULATED

8 Dated: October 27, 2009

**DUANE MORRIS LLP**

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10 By:                   /s/ Brian A. Kelly                    
11 Brian A. Kelly  
12 Christian P. Foote  
13 Attorneys for Plaintiff WALNUT CREEK MANOR  
14 LLC

14 Dated: October 27, 2009

**HOWERY LLP**

15                   /s/ Jeffrey M. Judd                    
16 Jeffrey M. Judd  
17 Attorneys for Defendant and Cross-Complainant  
18 MAYHEW CENTER LLC and DEAN DUNIVAN  
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**ORDER**

Pursuant to the above stipulation, and good cause appearing therefore, IT IS SO ORDERED that WCM's opposition papers to MC's Motion for New Trial under FRCP 59 and Motion to Alter or Amend the CERCLA Judgment under FRCP 52, as well as any opposing affidavits, are due on November 12, 2009.

10/28/09

Dated \_\_\_\_\_



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Hon. Claudia Wilken  
Judge of the United States District Court