

1 RICHARD C. JOHNSON (SBN 40881)
 SHAAMINI A. BABU (SBN 230704)
 2 SALTZMAN & JOHNSON LAW CORPORATION
 44 Montgomery Street, Suite 2110
 3 San Francisco, CA 94104
 (415) 882-7900
 4 (415) 882-9287 – Facsimile
 djohnson@sjlawcorp.com
 5 sbabu@sjlawcorp.com

6 Attorneys for Plaintiffs

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UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 OPERATING ENGINEERS' PENSION
 TRUST FUND, et al.,

11

Plaintiffs,

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vs.

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14 WESTERN POWER & EQUIPMENT CORP,
 et al.,

15

Defendants.

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Case No.: C 10-04460 PJH

**STIPULATION REGARDING
 MEDIATION AND OTHER
 DEADLINES; AND [~~PROPOSED~~]
 ORDER THEREON**

Complaint Filed: 10/1/10
 FAC Filed: 11/12/10
 SAC Filed: 3/16/11
 Trial: 11/15/12
 Judge: Honorable Phyllis J. Hamilton

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The parties hereby stipulate as follows:

19

Overview

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1. This action involves withdrawal liability allegedly owed to Plaintiff Operating
 21 Engineers Pension Trust Fund under ERISA as amended by the Multiemployer Pension Plan
 22 Amendments Act of 1980 (29 U.S.C §§ 1001-1461 (1982).

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Defendants Case Dealer and CNH America

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2. Defendants CDHC and CNH filed their Answer to the SAC on July 21, 2011.

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Defendant APM I

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3. Defendant Arizona Pacific Materials I, LLC (“APM I”) appeared in this action
 27 (Docket No. 39) through legal counsel which filed a motion for leave to withdraw as counsel on
 28 July 5, 2011 (Docket 99). Said motion was granted on August 2, 2011 (Docket 106). Thereafter,

STIPULATION RE MEDIATION
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1 default was entered against APM I on September 14, 2011 (Docket No. 114). Plaintiffs were
2 required to file a motion for default judgment against APM I within 30 days from entry of default
3 in accordance with Civil Minutes dated September 1, 2011 (Docket No. 111). In light of this
4 Stipulation, Plaintiffs will file a motion for default judgment by December 31, 2011, so that
5 Plaintiffs have the opportunity to rely on any information and documents that Rubin, Rubin Trust,
6 and McLain may produce by December 15, 2011.

7 **Defendant APM II**

8 4. Defendant Arizona Pacific Materials II, LLC (“APM II”) has been dismissed
9 without prejudice.

10 **Defendant Rubin**

11 5. Defendant Robert Rubin (“Rubin”) and Rubin Family Irrevocable Trust (“Rubin
12 Trust”) filed their Answer the SAC on July 22, 2011. Plaintiffs allege that Defendants Rubin and
13 Rubin Trust are liable under Cal. Corp. Code §2011(a), 8 Del. C. 1953, §242, and Or. Rev. Stat.
14 §60.645. Defendants Rubin and Rubin Trust contend that they are entitled to a dismissal since
15 they did not receive any distributions at the time of dissolution of WPE Defendants, and that they
16 are not subject to the Court’s personal jurisdiction in this matter. Counsel for Defendants Rubin
17 and Rubin Trust has produced certain documents relevant to this action voluntarily without the
18 need for Plaintiffs to propound discovery. Said Defendants anticipate establishing that they did
19 not receive any distributions upon dissolution by **December 15, 2011**. If Plaintiffs determine that
20 Defendants have sufficiently established that they did not receive any distributions upon
21 dissolution Plaintiffs will dismiss Defendants Rubin and Rubin Trust. If Defendants Rubin and
22 Rubin Trust fail to establish that they did not receive distributions upon dissolution then said
23 Defendants will participate in mediation.

24 **Defendant McLain**

25 6. Defendant Dean McLain (“Defendant McLain”) filed his Answer to the SAC on
26 July 22, 2011. Plaintiffs allege that Defendant McLain is liable under Cal. Corp. Code §2011(a), 8
27 Del. C. 1953, §242, and Or. Rev. Stat. §60.645. Defendant McLain contends that he is entitled to
28 a dismissal since he did not receive any distributions at the time of dissolution of WPE

1 Defendants, and that he is not subject to the Court’s personal jurisdiction in this matter. Counsel
2 for Defendant McLain has produced certain documents relevant to this action voluntarily without
3 the need for Plaintiffs to propound discovery. Defendant McLain anticipates establishing that he
4 did not receive any distributions upon dissolution by **December 15, 2011**. If Plaintiffs determine
5 that Defendant has sufficiently established that he did not receive any distributions upon
6 dissolution Plaintiffs will dismiss Defendant McLain. If Defendant McLain fails to establish that
7 he did not receive distributions upon dissolution then he will participate in mediation.

8 **WPE Defendants**

9 7. Western Power Equipment Corp., a Delaware corporation, and Western Power &
10 Equipment Corp., an Oregon corporation (collectively “WPE Defendants”) have not yet appeared
11 in this action. Plaintiffs are informed and believe that the entities are dissolved. Default was
12 entered against WPE Defendants on September 14, 2011 (Docket No. 114). Plaintiffs were
13 required to file a motion for default judgment against the WPE Defendants within 30 days from
14 entry of default in accordance with Civil Minutes dated September 1, 2011 (Docket No. 111). In
15 light of this Stipulation, Plaintiffs will file a motion for default judgment by December 31, 2011,
16 so that Plaintiffs have the opportunity to rely on any information and documents that Rubin, Rubin
17 Trust, and McLain may produce by December 15, 2011.

18 **ADR**

19 8. Pursuant to Stipulation and Order Selecting ADR Process the parties are required to
20 complete mediation by November 15, 2011 (Docket No. 108). Charles Loughran was appointed
21 as the mediator in this action on August 30, 2011 (Docket No. 110). Counsel for the parties
22 participated in a phone conference with Mr. Loughran on September 20, 2011, and agreed to hold
23 the mediation on January 10, 2012, January 11, 2012, or January 12, 2012, for the reasons
24 specified in paragraphs 5 and 6, above.

25 **Pre-Trial Deadlines**

26 The parties acknowledge the pre-trial deadline specified in the Pre-Trial Order dated
27 September 6, 2011 (Docket No. 112) and do not seek to change any of those deadlines at the
28 present time.

1 **Magistrate Judge**

2 The parties do not consent to this matter being assigned to a magistrate judge for purposes
3 other than discovery disputes.

4
5 Dated: October 6, 2011

SALTZMAN & JOHNSON
LAW CORPORATION

6
7 By: _____/s/_____
8 Shaamini A. Babu
Attorney for Plaintiffs

9 Dated: October 6, 2011

FORD & HARRISON LLP

10 By: _____/s/_____
11 Steven L. Brenneman
12 Sandra J. McMullan
13 Attorneys for Defendants Case Dealer Holding
14 Company LLC and CNH America LLC
350 S. Grand Avenue, Suite 2300
Los Angeles, CA 90071

15 Dated: October 6, 2011

TRAVIS & PON

16 By: _____/s/_____
17 Monte Travis
18 Counsel for Defendants Dean McLain, Robert Rubin,
and Rubin Family Irrevocable Trust

19 **ORDER**

20 Based on the foregoing Stipulation, the parties shall participate in mediation prior to
21 February 1, 2012. All deadlines as specified in the Pre-Trial Order dated September 6, 2011
22 (Docket No. 112) remain unchanged.

23
24 IT IS SO ORDERED.

25
26 Dated: _ 10/11/11 _____

27 PHYLLIS J. HAMILTON
28 United States District Judge



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