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6 Attorneys for Plaintiffs

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8 UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

11 Plaintiffs,

12 vs.

13 WESTERN POWER & EQUIPMENT CORP,
 14 et al., ,

15 Defendants.

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Case No.: C 10-04460 PJH

**STIPULATION REGARDING CASE
 MANAGEMENT CONFERENCE AND
 RELATED DEADLINES; AND
 [PROPOSED] ORDER**

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

18 Pursuant to Fed. R. Civ. P. Rule 6(b) and Civ. L.R. 6.1, the parties hereby stipulate as
 19 follows:

20 **Overview**

21 1. This action involves withdrawal liability owed to Plaintiff Operating Engineers
 22 Pension Trust Fund under ERISA as amended by the Multiemployer Pension Plan Amendments
 23 Act of 1980 (29 U.S.C §§ 1001-1461 (1982)). The Second Amended Complaint (“SAC”) was filed
 24 on March 16, 2011 (“Docket 53”) pursuant to this Court’s Minute Order dated February 16, 2011
 25 (Docket No. 45). Given the recent filing of the SAC, the complex issues involved in this action,
 26 and the claims pending against numerous Defendants, the parties hereby stipulate to extend the
 27 deadlines pending in this action as specified herein.

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STIPULATION
 CASE NO. C10- 004460 PJH

1 **Defendants Case Dealer and CNH America**

2 2. Defendants Case Dealer Holding Company, LLC (“Case Dealer”) and CNH
3 America, LLC (“CNH America”) have appeared in this action (Docket No. 10) and are
4 represented by legal counsel that is registered with the Court’s Electronic Case Filing system.
5 Accordingly, Defendants Case Dealer and CNH America have been electronically served with the
6 SAC. As such, Defendants Case Dealer and CNH America’s answer or responsive pleading to the
7 Second Amended Complaint is due on **April 6, 2011**.

8 **Defendant APM I**

9 3. Defendant Arizona Pacific Materials I, LLC (“APM I”) appeared in this action
10 (Docket No. 39) through its legal counsel that is registered with the Court’s Electronic Case Filing
11 system. Accordingly, Defendant APM I has been electronically served with the SAC. As such,
12 Defendant APM I’s answer or responsive pleading to the Second Amended Complaint is due on
13 **April 6, 2011**. However, legal counsel that had previously appeared for APM I filed a Notice of
14 Withdrawal of Counsel on March 18, 2011 (Docket 58), and has advised Plaintiffs’ counsel that
15 Defendant AMP I is a dissolved entity. The same firm still represents APM II, see below.

16 **Defendant APM II**

17 4. Defendant Arizona Pacific Materials II, LLC (“APM II”) has appeared in this
18 action (Docket No. 39) and is represented by legal counsel that is registered with the Court’s
19 Electronic Case Filing system. Accordingly, Defendant APM II has been electronically served
20 with the SAC. As such, Defendant APM II’s answer or responsive pleading to the Second
21 Amended Complaint is due on April 6, 2011. Plaintiffs hereby grant an extension until **May 6,**
22 **2011**, for Defendant APM II to file an answer or responsive pleading to the SAC. The extension
23 is necessary so that Plaintiffs and Defendant APM II can attempt to resolve their respective claims
24 and defenses without the Court’s involvement.

25 **Defendant Rubin**

26 5. Service on Defendant Robert Rubin (“Rubin”) and Rubin Family Irrevocable Trust
27 (“Rubin Trust”) was effectuated on January 29, 2011 (Docket Nos. 48-49). Defendants Rubin and
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1 Rubin Trust are represented by legal counsel. Plaintiffs hereby agree to an extension until **May 6,**
2 **2011,** for Defendants Rubin and Rubin Trust to file an answer or responsive pleading to the SAC.
3 The extension is necessary so that Plaintiffs and Defendants Rubin and Rubin Trust can attempt to
4 resolve their respective claims and defenses without the Court's involvement. Defendants Rubin
5 and Rubin Trust contend that the Court lacks personal jurisdiction over them, and if they must file
6 a responsive pleading they intend to move for dismissal on that basis.

7 **Defendant McLain**

8 6. Defendant Dean McLain ("Defendant McLain") is represented by legal counsel
9 who is authorized to accept service on behalf of Defendant McLain. Plaintiffs hereby agree to an
10 extension until **May 6, 2011,** for Defendant McLain to file an answer or responsive pleading to the
11 SAC. The extension is necessary so that Plaintiffs and Defendant McLain can attempt to resolve
12 their respective claims and defenses without the Court's involvement. Defendant McLain
13 contends that the Court lacks personal jurisdiction over him, and if he must file a responsive
14 pleading he intends to move for dismissal on that basis.

15 **WPE Defendants**

16 7. Western Power Equipment Corp., a Delaware corporation, and Western Power &
17 Equipment Corp., an Oregon corporation (collectively "WPE Defendants") have not yet appeared
18 in this action. Plaintiffs are informed and believe that the entities are dissolved. Plaintiffs allege
19 that service of WPE Defendants was effectuated through service on its shareholder Defendant
20 Rubin on January 29, 2011, pursuant to Cal. Corp. Code §2011(b). At this time, Plaintiffs'
21 counsel has not been contacted by anyone on behalf of WPE Defendants. Plaintiffs are in the
22 process of ascertaining if WPE Defendants intend to appear in this action. Plaintiffs intend to
23 conduct discovery regarding several issues, including but not limited to, WPE Defendants' sale of
24 assets, the letter agreement between WPE Defendants and Defendant Case Dealer, members of
25 WPE Defendants' control group, WPE Defendants' corporate status, as well as their assets at all
26 relevant time periods and will move for a default judgment against WPE Defendants, if necessary.

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1 **Other Deadlines**

2 8. Since the SAC was filed on March 16, 2011, the parties did not have sufficient time
3 to meet and confer and attempt to stipulate to an ADR process by March 21, 2011, or file a Rule
4 26(f) report and complete initial disclosures by March 31, 2011. The parties require sufficient
5 opportunity to complete said tasks in preparation for a productive Case Management Conference.
6 In the interest of minimizing costs as well as the Court’s time and resources, the parties
7 respectfully request that the deadlines currently pending in this action be continued as follows:

8	Prior Date	New Date	Event	Governing Rule
9	3/21/11	5/16/11	Last day to:	
10	(Dkt # 3)		<ul style="list-style-type: none"> • meet and confer re initial disclosures, early settlement, ADR process selection, and discovery plan • file ADR Certification signed by parties and counsel • file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference 	F.R.Civ.P. 26(f) ADR L.R. 3.5 L.R.3-5
11		5/26/11		Civil L.R. 16-8 (b)
12				ADR L.R. 3-5(b)
13				Civil L.R. 16-8 (c)
14				ADR L.R. 3-5(b)-(c)
15	3/31/11	5/30/11	Last day to file Rule 26(f) Report, complete initial disclosures or state objection in Rule 26(f) Report and file Case Management Statement per Standing Order re Contents of Joint Case Management Statement	F.R.Civ.P. 26(a) (1) Civil L.R . 16-9
16	(Dkt #3)			
17		6/2/11		
18	4/7/11	6/6/11	Initial Case Management Conference	Civil L.R . 16-10
19	(Dkt #34)			
20				

21 9. The parties believe that an extension of the deadlines as specified herein promotes
22 the interest of judicial economy, fairness, and will help effectuate a just speedy and inexpensive
23 determination of this action. See FED. R. CIV. P. 1.

24 Dated: March 22, 2011

SALTZMAN & JOHNSON
LAW CORPORATION

25
26 By: _____/s/_____
27 Shaamini A. Babu
28 Attorney for Plaintiffs

1 Dated: March 22, 2011

FORD & HARRISON LLP

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By: _____/s/_____

Steven L. Brenneman

Sandra J. McMullan

Attorneys for Defendants Case Dealer Holding

Company LLC and CNH America LLC

350 S. Grand Avenue, Suite 2300

Los Angeles, CA 90071

7

8 Dated: March 22, 2011

SHEPPARD, MULLIN, RICHTER,

HAMPTON, LLP

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10

By: _____/s/_____

Robert Friedman

Dianne B. Smith

M. Michael Cole*

Attorneys for Defendant Arizona Pacific

Materials II, LLC

* *Pro Hoc Vice Application Pending*

14

15 Dated: March 22, 2011

TRAVIS & PON

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By: _____/s/_____

Monte Travis

Counsel for Defendants Dean McLain, Robert Rubin,

and Rubin Family Irrevocable Trust

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ORDER

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Based on the foregoing Stipulation of the parties, the deadlines currently pending in this

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action are extended as specified above.

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IT IS SO ORDERED.

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Dated: 3/24/11

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PHYLLIS J.
United States



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STIPULATION
CASE NO. C10- 004460 PJH

1 **PROOF OF SERVICE**

2 I, the undersigned, declare:

3 I am employed in the County of San Francisco, State of California. I am over the age of
4 eighteen and not a party to this action. My business address is 44 Montgomery Street, Suite 2110,
5 San Francisco, California 94104.

6 On March 22, 2011, I served the following documents on the parties to this action in the
7 manner described below:

8 **STIPULATION REGARDING CASE MANAGEMENT CONFERENCE AND
9 RELATED DEADLINES; AND [PROPOSED] ORDER**

10 XX **ELECTRONICALLY** by causing said document to be electronically filed using the
11 Court's Electronic Court Filing ("ECF") System and service was completed by electronic
12 means by transmittal of a Notice of Electronic Filing on the registered participants of the
13 ECF System. I served those parties who are not registered participants of the ECF System
14 as indicated below.

15 XX **MAIL**, being familiar with the practice of this office for the collection and the processing
16 of correspondence for mailing with the United States Postal Service, and deposited in the
17 United States Mail copies of the same to the business addresses set forth below, in a sealed
18 envelope fully prepared.

19 **FACSIMILE** by causing said document to be transmitted by Facsimile machine to the
20 number indicated after the address(es) set forth below.

21 **UPS** for delivery the following business day by placing same for collection by UPS to the
22 business addresses set forth below.

23 **PERSONAL DELIVERY** by placing said document in a sealed envelope and causing it to
24 be personally delivered to the address(es) set forth below.

25 *To:*

26 Robert Friedman
27 Dianne B. Smith
28 M. Michael Cole
Sheppard Mullin Richter & Hampton LLP
1300 I Street, NW
11th Floor East
Washington, DC 20005
VIA ECF
Defendant: Arizona Pacific Materials II LLC

Sandra J. McMullin
Steven L. Brenneman
Ford & Harrison LLP
350 S. Grand Avenue, Suite 2300
Los Angeles, CA 90071

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VIA ECF
*Attorneys for Defendants Case Dealer Holding Company LLC and
CNH America LLC*

Monte S. Travis
Law Offices of Travis & Pon
2271 California Street
San Francisco, CA 94115

VIA MAIL
*Defendants: Defendants Dean McLain, Robert Rubin, and Rubin
Family Irrevocable Trust*

I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on this 22ND day of March, 2011, at San Francisco, California.

_____/S/_____
Barbara Souza