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12 **UNITED STATES DISTRICT COURT FOR THE**  
 13 **NORTHERN DISTRICT OF CALIFORNIA**

14 OPERATING ENGINEERS' PENSION  
 15 TRUST FUND; F.G. CROSTHWAITE and  
 16 RUSSELL E. BURNS, as Trustees,

17 Plaintiffs,

18 v.

19 WESTERN POWER & EQUIPMENT  
 20 CORP., an Oregon corporation; and  
 21 WESTERN POWER & EQUIPMENT  
 22 CORP., a Delaware corporation; ARIZONA  
 23 PACIFIC MATERIALS II, LLC, an  
 24 Arizona limited liability company;  
 25 CHARLES DEAN McLAIN, as an  
 26 individual; ROBERT RUBIN, as an  
 27 individual; RUBIN FAMILY  
 28 IRREVOCABLE STOCK TRUST; CASE  
 DEALER HOLDING COMPANY, LLC  
 (f/k/a CNH DEALER HOLDING  
 COMPANY, LLC), a Delaware limited  
 liability company; CNH AMERICA, LLC, a  
 Delaware limited liability company; and  
 DOES 1-20,

Defendants.

**Case No. CV 10-4460 PJH**

**JOINT STIPULATION AND  
 [PROPOSED ORDER] TO EXTEND  
 TIME FOR ARIZONA PACIFIC  
 MATERIALS, LLC TO RESPOND TO  
 SECOND AMENDED COMPLAINT**

Trial Date: None

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1 Pursuant to Rule 6(b), FED. R. CIV. P., and Civil L.R. 6.1, Plaintiffs Operating  
2 Engineers' Pension Trust Fund, F.G. Croswaite and Russell E. Burns ("Plaintiffs") and  
3 Defendant Arizona Pacific Materials, LLC ("APM I"), hereby stipulate as follows:

4 1. The instant action is a complex action arising under the Employee  
5 Retirement Income Security Act of 1974, as amended, ("ERISA"), 29 U.S.C. § 1001 *et*  
6 *seq.* Plaintiffs have named nine Defendants, and are seeking, among other things, money  
7 damages, liquidated damages, injunctive relief and attorneys' fees and costs.

8 2. On December 22, 2010, counsel for APM II inadvertently made an  
9 appearance on behalf of APM I. APM I is a dissolved entity. Accordingly, on March 18,  
10 2011, counsel for APM II attempted to file a notice of withdrawal. On March 22, 2011,  
11 counsel for APM II also informed Plaintiffs' counsel that APM I was a dissolved entity. A  
12 stipulation filed on March 22, 2011 reflects this.

13 3. On March 16, 2011, the Second Amended Complaint was filed. Although  
14 advised that APM I is a dissolved entity and that the appearance by APM II's counsel on  
15 APM I's behalf was inadvertent, Plaintiff claims APM I was served with the Second  
16 Amended Complaint and APM I's response was due on April 6, 2011.

17 4. Despite Plaintiff's view that APM I's response to the Second Amended  
18 Complaint was due on April 6, 2011, the Parties have been exploring the exact nature of  
19 APM I's status. So as to preserve APM I's rights and to allow for continued discussion, the  
20 parties have agreed that APM I will have up until May 26, 2011 to respond to the Second  
21 Amended Complaint.

22 5. The Parties believe that a further extension of the deadline to respond to the  
23 Second Amended Complaint under the circumstances here promotes the interest of judicial  
24 economy, fairness, and will help effectuate a just, speedy and inexpensive determination of  
25 this action. *See* FED. R. CIV. P. 1.

