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

11 OPERATING ENGINEERS' PENSION
 12 TRUST FUND; F.G. CROSTHWAITE and
 13 RUSSELL E. BURNS, as Trustees,

14 Plaintiffs,

15 v.

16 WESTERN POWER & EQUIPMENT
 17 CORP., an Oregon corporation; and
 18 WESTERN POWER & EQUIPMENT
 19 CORP., a Delaware corporation; ARIZONA
 20 PACIFIC MATERIALS II, LLC, an
 21 Arizona limited liability company;
 22 CHARLES DEAN McLAIN, as an
 23 individual; ROBERT RUBIN, as an
 24 individual; RUBIN FAMILY
 25 IRREVOCABLE STOCK TRUST; CASE
 26 DEALER HOLDING COMPANY, LLC
 27 (f/k/a CNH DEALER HOLDING
 28 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, on
20 May 5, 2011, the parties entered into a stipulation and proposed order to extend the time up
21 until May 26, 2011 for APM I to respond to the Second Amended Complaint.

22 5. The parties are continuing to explore the nature of APM I's status. In
23 addition, counsel for APM II has informed Plaintiff that it intends to file a motion to strike
24 the notice of appearance/motion to withdraw its appearance on behalf of APM I. In light
25 of this, and so as to continue to preserve APM I's rights while that motion is pending, the
26 parties agree to extend the time for APM I to respond to the Second Amended Complaint

1 to July 5, 2011 or five days after the motion to strike the notice of appearance/motion to
2 withdraw is decided by the Court, whichever is later.

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

7 7. The requested extension will not materially delay the disposition of this
8 action, as the Second Amended Complaint was recently filed with the Court on March 16,
9 2011 and the initial Case Management Conference will be held in June 2011.

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Dated: May 26, 2011

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By /s/ M. Michael Cole
ROBERT FRIEDMAN (*Pro Hac App. Pending*)
DIANNE B. SMITH
M. MICHAEL COLE

Attorneys for Defendant
ARIZONA PACIFIC MATERIALS II, LLC

Dated: May 26, 2011

SALTZMAN & JOHNSON LAW CORPORATION

By /s/ Shaaminni A. Babu
SHAAMINI BABU

Attorneys for Plaintiffs

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PURSUANT TO STIPULATION, IT IS ORDERED that APM I shall have until July 5, 2011 or five days after the anticipated motion to strike the notice of appearance/motion to withdraw is decided by the Court, whichever is later, to respond to the Second Amended Complaint..

Dated: 5/31/11

