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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In Re Maxim Integrated Products, Inc.,
Derivative Litigation

NO. C 06-03344 JW

**ORDER GRANTING *EX PARTE*
APPLICATION AND JOINDER OF
APPLICATION TO EXTEND TIME TO
RESPOND TO THIRD AMENDED
COMPLAINT**

Presently before the Court is Defendants' *Ex Parte* Application to Extend Time to Respond to The Third Amended Complaint. (hereafter, "Application," Docket Item Nos. 191, 204.) Defendants request a continuance on their deadline for responding to the Third Amended Complaint, filed on September 19, 2008, until the latter of (a) the resolution of their Motion to Stay, filed September 25, 2008,¹ or (b) the resolution of the settlement-approval process underway in a related Delaware action.

Under Fed. R. Civ. P. 12(a), Defendants have until October 9, 2008 to file their Answers to the Third Amended Complaint. Under Fed. R. Civ. P. 6(b), the Court has the authority to, "for good cause," extend Defendants' time for filing their Answers.

¹ Defendant Maxim filed a motion to stay on September 25, 2008. (See Docket Item No. 199.) Individual Defendants John F. Gifford and Carl W. Jasper have since joined that motion. (See Docket Item Nos. 206, 209.) The remaining Individual Defendants have stated their intention to also file a motion to stay. (See Application at 1.) Defendant Maxim has also filed an interim motion to stay proceedings until the Court has ruled on the initial motion to stay. (See Docket Item No. 201.)

1 In a related derivative action pending in the Court of Chancery for the State of Delaware, the
2 parties have reached a settlement and filed a stipulation of settlement for approval by the court. (See
3 Michael J. Ioannou Letter and Attachments, hereafter, “Delaware Settlement Stipulation,” Docket
4 Item No. 187.) An approval hearing is set for November 24, 2008. (See Michael J. Ioannou Letter,
5 Docket Item No. 188.) If the Delaware court approves the settlement, Defendants will move to
6 dismiss this action because the settlement stipulation will purportedly constitute the full and final
7 disposition of all claims related to any party that could have been named in this case, the Delaware
8 Action, and the related California state actions. (See Delaware Settlement Stipulation ¶¶ 3.1, 1.14.)

9 Defendants contend that they should not be required to expend the resources necessary to
10 respond to the Third Amended Complaint because approval of the settlement would moot their
11 response. Defendants have also filed a motion to stay and an *ex parte* motion for an interim stay
12 until a hearing is held on the motion to stay. (See Docket Item Nos. 199, 201.) Since no answers to
13 the previous Complaints have been filed, and the Third Amended Complaint is over 151 pages,
14 answering the Third Amended Complaint will require a substantial effort on the part of Defendants.
15 In addition, because this is a derivative action, Maxim itself will bear a great deal of the cost of
16 preparing the Individual Defendants’ Answers.

17 The Court finds that good cause exists for extending Defendants’ time to answer. However,
18 Defendants’ request that their time for filing be extended until the latter of the resolution of their
19 motion to stay or the settlement proceedings in Delaware. This request seeks substantial delay
20 before the Court has considered of the merits of Defendants’ motion to stay. Accordingly, the Court
21 finds the particular extension requested by the Defendants is unwarranted.

22 Plaintiffs contend that no extension should be granted because the preclusive effect, and
23 therefore the mooting effect, of the Delaware settlement is speculative. (Plaintiffs’ Opposition to
24 Defendants’ *Ex Parte* Application to Extend Time to Respond to Third Amended Complaint,
25 hereafter, “Opposition,” Docket Item No. 207.) According to Plaintiff, the Delaware action
26 concerns only state law claims and the settlement does not provide consideration for Plaintiffs’
27 Exchange Act claims brought here. (Opposition at 1-2.) These issues are more appropriately
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addressed with Defendants' motion to stay. Further, Plaintiffs will not be prejudiced by a minor delay while the Court fully addresses the merits Defendants' motion to stay.

Accordingly, the Court GRANTS Defendants' *Ex Parte* Application to Extend Time to Respond to The Third Amended Complaint. Defendants shall file and serve their Answers, the earlier of (a) ten days after the resolution of the Defendants' pending Motion to Stay or (b) ten days after the resolution of the settlement-approval process underway in Delaware.

Dated: October 2, 2008



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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17 **Dated: October 2, 2008**

Richard W. Wieking, Clerk

19 **By: /s/ JW Chambers**
20 **Elizabeth Garcia**
21 **Courtroom Deputy**