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5 Attorneys for Defendant
 6 Moyer Products, Inc.

7
 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**

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 11 MAXIM I PROPERTIES, a general
 partnership,

12 Plaintiff,

13 vs.

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 15 A.M. BUD KROHN, ET AL,

16 Defendants.

17
 18 AND RELATED CROSS-ACTIONS.
 19

) Case No. **5: 12-CV-00449 LHK**

)
)
) **STIPULATION AND PROPOSED ORDER**
) **TO AMEND SCHEDULING ORDER TO**
) **EXTEND PLEADING DEADLINE**

)
)
) **Action Filed: January 27, 2012**
) **Trial Date: February 18, 2014**

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 21 Following the July 11, 2012, Initial Case Management Conference in this matter, this
 22 Court issued a Case Management Order on July 13, 2012, which includes a September 17,
 23 2012, deadline for defendants to file pleadings. The Case Management Order also set a further
 24 Case Management Conference on October 3, 2012. For the reasons set forth below, the parties
 25 to this action stipulate to extend the deadline for filing or amending responsive pleadings,
 26 cross-claims, counterclaims, and third-party complaints by defendants until October 12, 2012,
 27 and seek an order from this Court extending that deadline.

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I.

DEVELOPMENTS SINCE CASE MANAGEMENT CONFERENCE

Several things have happened since the Case Management Conference, and other developments are anticipated but have yet to come to fruition. Foremost was plaintiff Maxim I Properties' decision to dismiss all defendants but Moyer Products, Inc. ("Moyer"). The case now consists of plaintiff's complaint against Moyer, and Moyer's cross-claims against the co-defendants originally named by plaintiff. Nearly all of the original defendants need to file pleadings in response to Moyer's cross-claims, and those pleadings are likely to include cross-claims for contribution against all of the other parties. In other words, once the parties file responsive pleadings, there is likely to be a landslide of contribution claims that will result in the need to file literally dozens of responsive pleadings. In total, the cross-claims and responses to those cross-claims that are likely to be filed by the September 17, 2012, deadline will exceed 100 distinct pleadings.

Furthermore, DTSC has recently indicated that it intends to amend its Enforcement Order by, among other things, dropping some of the named respondents and adding others. DTSC has indicated that it will issue such an amended order by October 1, 2012. The total number of respondents that will be named in the amended order is at least 66, and, depending on how many current respondents DTSC decides to drop from the order, as many as 75. If the September 17 deadline remains in place, Moyer intends to join as third-party defendants to this litigation the entities named by DTSC as respondents that are not already parties to this action.

Another significant development is Moyer's efforts to organize a group of parties under an interim cost sharing agreement in order to conduct the site investigation required by the California Department of Toxic Substances Control ("DTSC"). Moyer, through its consultant, Roux Associates, Inc., has developed a proposed scope of work to accomplish the site investigation. (This scope of work covers the tasks required to gather the necessary data and writing a report to present the analysis of that data. DTSC's requirements are not limited to investigatory work - DTSC will require further reports that analyze remediation options, etc.)

1 Moyer has used this scope of work, which has been discussed with DTSC, to prepare a cost
2 estimate.

3 Moyer invited representatives from all parties for whom Moyer had contact information
4 (a list that included current defendants as well as entities named in DTSC's enforcement order
5 but not currently named as parties to this litigation) to a telephone conference that was
6 conducted on September 5, 2012. During that telephone conference, Moyer proposed the
7 formation of a cost-sharing group to conduct the required site investigation. Moyer asked each
8 party that participated in the telephone conference to respond to the proposal by September 14,
9 2012.

10 If a sufficient number of parties respond that they are willing to enter into an agreement
11 to conduct the required site investigation, Moyer intends to circulate a draft agreement by
12 September 21, 2012, and hopes to finalize such an agreement by September 28, 2012 (this
13 agreement would provide for an interim allocation of costs, which would not be binding on the
14 parties for purposes of final settlement or in the event that allocation was litigated to
15 judgment).

16 Furthermore, if such a group can be formed, Moyer anticipates that the parties will ask
17 this Court to stay this litigation. Participation in the cost sharing agreement and the site
18 investigation effort will likely only make sense to many or all of the parties if they are not
19 simultaneously incurring litigation expenses. Nonetheless, as discussed at the Initial Case
20 Management Conference, the pending litigation is necessary to trigger what insurance
21 coverage exists. Therefore, a stay of the litigation would allow parties participating in a cost
22 sharing agreement to avoid litigation costs, but insurance carriers would not withdraw from
23 participating in resolution of this matter.

24 II.

25 REQUESTED RELIEF

26 The current Case Management Order requires all parties to file responsive pleadings or
27 to amend their pleadings, including the filing of third-party complaints, by September 17,
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1 2012. That date does not allow the parties sufficient time to determine if a cost sharing
2 agreement can be worked out before filing a significant volume of pleadings.

3 Amending the deadline for filing responsive pleadings will allow the parties to
4 determine if an agreement can be reached on conducting the initial site investigation required
5 by DTSC without the need for filing responsive pleadings. If such an agreement cannot be
6 reached and therefore the parties face no choice but to litigate this dispute, changing the
7 deadline from September 17 to October 12 will have no significant impact on the course of this
8 litigation, as the parties are not seeking to have any other date in the Case Management Order
9 changed at this time.

10 If, on the other hand, an agreement can be reached, the parties anticipate discussing
11 with the Court at the October 3 Case Management Conference how to keep the parties'
12 litigation expenses to a minimum, which would likely take the form of a stay of the litigation.
13 Such a stay would allow the parties to conduct the site investigation, which is necessary for the
14 parties to negotiate a final settlement, because without the site investigation, no analysis of a
15 remedial strategy can occur, and without the selection of a remedial strategy, there is no way to
16 even estimate the total amount of response costs that will be necessary.

17 An extension to October 12, 2012, will also allow the defendants to align the parties
18 named as respondents by DTSC to its enforcement order with the parties to be joined as third-
19 party defendants to this litigation.

20 Therefore, pursuant to this stipulation, the parties respectfully request this Court to
21 amend the current Case Management Order's September 17, 2012, deadline for further
22 pleadings to provide that responsive pleadings, amendments, and third-party complaints must
23 be filed no later than October 12, 2012.

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1 DATED: September 11, 2012

NIXON PEABODY LLP

2
3 By: /s/ Lisa Cole

4 GREGORY P. O'HARA
5 LISA A. COLE
6 ALISON B. TORBITT
7 Attorneys for MAXIM I
8 PROPERTIES

9 DATED: September 11, 2012

ABDALAH LAW OFFICES

10 By: /s/ Richard K. Abdalah

11 RICHARD K. ABDALAH
12 MIRIAM WEN-LEBRON
13 Attorneys for TELEWAVE, INC.

14 DATED: September 11, 2012

ROUSSO & JACKEL

15 By: /s/ Jonathan Jackel

16 JONATHAN JACKEL
17 Attorneys for MAC CAL
18 COMPANY, INC.

19 DATED: September 11, 2012

CROWELL & MORING LLP

20 By: /s/ M. Kay Martin

21 M. KAY MARTIN
22 THOMAS F. KOEGEL
23 Attorneys for GREYHOUND
24 LINES, INC.

1 DATED: September 11, 2012

DOWLING AARON INCORPORATED

2
3 By: /s/ Daniel Jamison
4 DANIEL OLIVER JAMISON
5 Attorneys for MC&L, INC., named herein
6 as MADERA CLEANERS & LAUNDRY,
7 INC.¹

8 DATED: September 11, 2012

BARG COFFIN LEWIS & TRAPP LLP

9 By: /s/ Joshua Bloom
10 JOSHUA BLOOM
11 DAVINA PUJARI
12 Attorneys for SPACE
13 SYSTEMS/LORAL, INC.

14 DATED: September 11, 2012

ARCHER NORRIS

15 By: /s/ Probal G. Young
16 PROBAL G. YOUNG
17 Attorneys for CENTRAL
18 COATING CO. INC.

19 DATED: September 11, 2012

BURNHAM BROWN

20
21 By: /s/ Kimberly Chew
22 KIMBERLY CHEW
23 ERIC R. HAAS
24 Attorneys for A.M. BUD KROHN
25 NATIONAL AUTO RECOVERY
26 BUREAU, INC.

27 ¹ This Stipulation shall not be considered an appearance of MC&L, Inc., formerly known as Madera Cleaners &
28 Laundry, Inc. ("Madera Cleaners) on plaintiff's complaint, on any cross-claim, on any third-party complaint, or in
the action. Madera Cleaner's contends that it has not been served with any cross-claim or third-party complaint
and that its appearances at court ordered events such as ADR Conferences or Case Management Conferences did
not constitute an appearance in this action and will not until and unless proper service is effected and a responsive
pleading filed. The parties agree that by executing this Stipulation, Madera Cleaners has not waived this
contention, nor has the analysis of that contention been affected by agreeing to this Stipulation.

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DATED: September 11, 2012

DUANE MORRIS LLP

By: /s/ Jess Raymond Booth
JESS RAYMOND BOOTH
Attorneys for BURKE INDUSTRIES,
INC.

DATED: September 11, 2012

LAW OFFICES OF STEVEN A. ELLENBERG

By: /s/ Steven A. Ellenberg
STEVEN A. ELLENBERG
MARK V. BOENNIGHAUSEN
Attorneys for BR & F SPRAY,
COMPONENT FINISHING, INC. &
SERRA CORPORATION

DATED: September 11, 2012

SILICON VALLEY LAW GROUP

By: /s/ Jeffrey Scott Lawson
JEFFREY SCOTT LAWSON
Attorneys for NU-METAL, INC. &
THERMIONICS LABORATORY, INC.

DATED: September 11, 2012

PAHL & McCAY

By: /s/ Servando R. Sandoval
SERVANDO R. SANDOVAL
Attorneys for SPRAYTRONICS, INC.

DATED: September 11, 2012

LEWIS, BRISBOIS BISGAARD & SMITH

By: /s/ Glenn Friedman
GLENN FRIEDMAN
ROBERT FARRELL
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WILLIAMS CO.

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DATED: September 11, 2012

LATHAM & WATKINS LLP

By: /s/ Andrea M. Hogan
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ANDREA M. HOGAN
Attorneys for INTEGRATED DEVICE
TECHNOLOGY, INC.

DATED: September 11, 2012

GOLDSBERRY, FREEMAN & GUZMAN LLP

By: /s/ Francis M. Goldsberry III
Francis M. Goldsberry III
Attorney for MOYER
PRODUCTS, INC.

IT IS SO ORDERED.

Dated: September 14, 2012


Lucy H. Koh
LUCY H. KOH
United States District Judge