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 8 Attorneys for Defendants
 9 Xcentric and Magedson
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12 **IN THE UNITED STATES DISTRICT COURT**
 13 **FOR THE DISTRICT OF ARIZONA**

14 Hy Cite Corporation, a Wisconsin
 15 Corporation;

16 Plaintiff,

17 v.

18 badbusinessbureau.com, L.L.C., a St.
 19 Kitts/Nevis Corporation d/b/a/
 20 badbusinessbureau.com and/or
 21 ripoffreport.com and/or
 22 badbusinessbureau.com/Rip-Off
 23 Report.com; Xcentric Ventures, LLC, an
 24 Arizona Limited Liability company d/b/a/
 25 badbusinessbureau.com and/or
 26 ripoffreport.com and/or
 27 badbusinessbureau.com/Rip-Off
 28 Report.com; and Ed Magedson, an Arizona
 resident,

Defendants.

Case No: CV04-2856 PHX EHC

**DEFENDANTS' MOTION FOR
 ENLARGEMENT OF TIME TO
 ANSWER**

Defendants Xcentric Ventures, LLC and Ed Magedson request that the Court, pursuant to Fed.R.Civ.P. 6(b), permit the late filing of their answer on the grounds that the answer was untimely as a result of the excusable neglect of undersigned counsel.

As the Court is aware, Defendants have previously appeared in this case and filed a Motion to Dismiss which was granted in part and denied in part on December 27, 2005.

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1 That Order triggered the time for the filing of an answer. The answer was due on January
2 17, 2006. On January 17, 2006, before the time to answer expired, Plaintiff filed an
3 Application for Entry of Default. The Court held oral argument on that Application on
4 January 30, 2006 and indicated that Defendants should have filed a request to file the
5 answer late.

6 Undersigned was, and had been, in Utah in arbitration when the Application for
7 Entry of Default was received. Adam Kunz, an attorney in our office who is not familiar
8 with the case and did not have the information needed to answer the complaint, contacted
9 counsel for Plaintiff and requested an extension. Counsel for Plaintiff would not agree,
10 and as soon as undersigned returned, an answer was filed. The answer was filed two days
11 late, on January 19, 2006.

12 The reason for the failure to file in a timely manner was that the Order came in
13 during the holidays, right before undersigned was beginning a complex securities law
14 arbitration in Utah. Due to an oversight, undersigned neglected to request that staff
15 docket the ten-day time period for filing the answer. It has been held that “excusable
16 neglect” under Rule 6(b) is a somewhat “elastic concept” and is not limited strictly to
17 omissions caused by circumstances beyond the control of the movant. *Pioneer Inv.*
18 *Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, *392, 113 S.Ct.
19 1489, **1496 (1993). Here, Defendants’ counsel’s failure to docket the answer, was
20 excusable neglect resulting from juggling numerous litigation matters, including one
21 complex out-of-state matter that was time demanding.

22 Plaintiff takes the position that entry of default is warranted. However, “default
23 judgments are a drastic remedy, not favored by the Federal Rules and resorted to by courts
24 only in extreme situations.” *Sun Bank of Ocala v. Pelican Homestead and Sav. Ass'n*, 874
25 F.2d 274, 276 (5th Cir.1989) (citations omitted).


26 Accordingly, Defendants request that the Court enter the proposed order filed
27 herewith granting Defendants an enlargement of time, pursuant to Rule 6(b) to file their
28 answer to and including January 19, 2006.

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DATED this 30th day of January, 2006.

JABURG & WILK, P.C.



Maria Crimi Speth
Attorneys for Defendants
Xcentric and Magedson

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of January, 2006, I caused the attached document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF

Registrants:

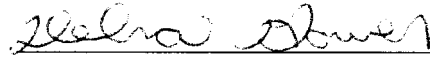
Don Bivens
Michael K. Dana
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3003 North Central Avenue
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Phoenix, Arizona 85012-2915
Attorneys for Plaintiff

With a COPY of the foregoing mailed on the 31st day of January, 2006, to:

John C. Scheller
MICHAEL BEST & FRIEDRICH, LLP
One South Pinckney Street
Suite 700
Madison, WI 53701-1806
Attorneys (pro hac vice) for Plaintiff

1 With a COPY of the foregoing hand delivered on the 31st day of January, 2006, to:

2 Honorable Earl H. Carroll
3 United States District court
4 Sandra Day O'Connor U. S. Courthouse
5 401 West Washington Street
6 Phoenix, Arizona 85003

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