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8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA
 10 WESTERN DIVISION

11 HELLS ANGELS MOTORCYCLE CORPORATION,
 12

13 Plaintiff,

14 v.

15 ALEXANDER MCQUEEN
 TRADING LIMITED, SAKS
 16 INCORPORATED, and ZAPPOS
 RETAIL, INC.
 17

18 Defendants.
 19

Case No. CV-10-8029 CBM (MANx)

DEFENDANTS' *EX PARTE*
 APPLICATION FOR EXTENSION OF
 TIME TO RESPOND TO INITIAL
 COMPLAINT; MEMORANDUM OF
 POINTS AND AUTHORITIES AND
 DECLARATION OF SUZANNE V.
 WILSON IN SUPPORT THEREOF
 (L.R. 7-19)

Date: n/a
 Time: n/a
 Place: Courtroom of the Honorable
 Consuelo B. Marshall

Complaint served: October 26, 2010
 Current response: February 22, 2011
 Requested new response date:
 March 22, 2011

1 **TO THE HONORABLE CONSUELO B. MARSHALL AND PLAINTIFF**
2 **AND ITS ATTORNEY OF RECORD:**

3 Defendants Alexander McQueen Trading Limited, Saks Incorporated, and
4 Zappos Retail, Inc. (“Defendants”) seek *ex parte* relief to obtain an additional
5 extension of time to respond to the Complaint in this action filed by plaintiff Hells
6 Angels Motorcycle Corporation (“HAMC”). The parties have been engaged in
7 settlement discussions. Defendants seek this relief because they have been unable to
8 contact HAMC’s counsel for over a week, since Tuesday, February 8, 2011.
9 Defendants’ response to the Complaint is due next Tuesday, February 22, 2011, thus
10 Defendants cannot bring this request to the Court as a regularly-noticed motion. In
11 light of the upcoming deadline to respond to the Complaint on February 22, 2011,
12 Defendants submits this Application for *ex parte* relief seeking a one-month
13 extension of time to March 22, 2011 to respond the Complaint.

14 Good cause exists for the requested relief. The parties have been engaged in
15 settlement discussions since last year. During this time, they have agreed to, and
16 stipulated to, previous extensions of time for Defendants to respond to the Complaint.
17 As set forth herein, the parties’ settlement discussions have been productive. HAMC
18 has provided no indication that it does not wish to continue these discussions. To the
19 contrary, the last communication from HAMC’s counsel included partial comments
20 to a draft settlement agreement. If the parties are able to resolve this matter through
21 settlement, their resolution will avoid the expenditure of unnecessary time and
22 resources by the Court and the parties.

23 Defendants do not know the reason for HAMC’s counsel’s lack of response
24 over the last week. HAMC’s counsel has been responsive in the past and Defendants
25 are unaware of any decision by HAMC to withdraw from settlement discussions.
26 HAMC’s counsel has experienced health issues over the last couple of months during
27 the parties’ settlement discussions. Defendants do not know if additional issues have
28 arisen for HAMC’s counsel over the last week.

1 This Application is made after providing notice to counsel for HAMC, as
2 required by Local Rule 7-19.1, by leaving HAMC's counsel Fritz Clapp a telephone
3 message on his office number at approximately 2:48 p.m., Wednesday, February 16,
4 2011, and by sending an email message to Mr. Clapp at his email address at 2:45 p.m.
5 on the same day. Defendants have not received any response to either message.
6 (Declaration of Suzanne V. Wilson ("Wilson Decl.") at ¶ 9.)

7 HAMC's counsel's information is:

8 Fritz Clapp
9 Work: 888-292-5784
10 Home: 916-548-1014
11 mail@fritzclapp.com
12 P.O. Box 2517
13 Beverly Hills, CA 90213

12 Defendants' *Ex Parte* Application is based upon this Application, the
13 supporting Memorandum of Points and Authorities, and the Declaration of Suzanne
14 V. Wilson and supporting exhibits, as well as all records and pleadings on file with
15 the Court in this action and on such further evidence and argument as may be
16 presented at or before the time of hearing.

17 Dated: February 16, 2011.

18 ARNOLD & PORTER LLP

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21 By: /s/ Suzanne V. Wilson

22 Suzanne V. Wilson
23 Attorneys for Defendants Alexander
24 McQueen Trading Limited, Saks
25 Incorporated, and Zappos Retail, Inc.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendants' current deadline to respond to the Complaint is February 22, 2011.
3 (Feb. 7, 2011 Order (Dkt. No. 15)). The parties, however, have been and are still
4 engaged in active and productive settlement discussions, the resolution of which will
5 obviate any need for Defendants to respond to the Complaint or for any expenditure
6 of further judicial resources. Though significant progress has been made towards
7 reaching a compromise, Defendants have not received any communication from
8 HAMC's counsel since Tuesday, February 8, 2011. (Wilson Decl. ¶¶ 3-9.)
9 Defendants have made numerous attempts to contact HAMC's counsel to continue
10 the parties' discussions. HAMC's counsel has failed to respond to email and
11 telephone messages left for him. (Wilson Decl. ¶¶ 4-9.) Accordingly, the parties will
12 be unable to reach a final resolution of this matter by February 22, 2011.

13 HAMC's counsel failure to respond to messages over the past week is not
14 typical of his past behavior in this matter. (Wilson Decl. ¶11.) Defendants are aware
15 that HAMC's counsel has had some medical issues over the last several months,
16 which has at times effected his ability to respond in this matter. (*Id.*) However,
17 Defendants are unaware whether these issues are related to HAMC's counsel's lack
18 of response this past week. Defendants believe that an additional extension of time to
19 facilitate continued settlement discussions is in the interest of all parties and judicial
20 economy. Defendants therefore file the instant Application for an extension of time
21 to respond to the Complaint from February 22, 2011 to March 22, 2011.

22 A. Procedural Background

23 Plaintiff filed the instant action in this Court on October 25, 2010. Plaintiff
24 served Defendants McQueen and Zappos with the Complaint on October 26, 2010,
25 and served Defendant Saks with the Complaint on October 27, 2010. On November
26 15, 2010, the parties, by stipulation under C.D. Cal. L.R. 8-3, extended Defendants'
27 deadline to respond to the Complaint by thirty (30) and twenty-nine (29) days time,
28 respectively, to December 16, 2010, in order to facilitate ongoing settlement

1 discussions. (Nov. 15 Stipulation (Dkt. No. 9).) So that they could continue to focus
2 on settlement discussions, on December 13, 2010 the parties, by stipulation
3 subsequently approved by this Court, extended Defendants' deadline to respond to
4 the Complaint by an additional thirty three (33) days time to January 18, 2011. (Dec.
5 13 Stipulation and Jan. 5 Order (Dkt. Nos. 10 and 11).) Still engaged in settlement
6 discussions, the parties stipulated to a further extension of time on January 12, 2011,
7 which was also approved by the Court. (Jan. 12 Stipulation and Jan. 14 Order (Dkt.
8 Nos. 12 and 13).) Finally, on February 3, 2011, the parties filed another stipulation to
9 extend Defendants' deadline to respond to the Complaint from February 8 to March
10 8. (Feb. 3 Stipulation (Dkt. No. 14).) On February 7, the Court approved the
11 stipulation but only granted an extension of Defendants' deadline to February 22,
12 2011. (Feb. 7 Order (Dkt. No. 15).)

13 B. Settlement Discussions and Need For Additional Extension of Time

14 The parties have used each of the extensions of time granted by the Court to
15 engage in substantive and productive settlement discussions. The parties have been
16 diligent in these discussions. This process is complicated by the number of parties
17 involved. The parties have exchanged draft settlement agreements. (Wilson Decl.
18 ¶ 2.) When they last spoke on February 2, 2011, counsel for the parties agreed to
19 speak again by February 11 regarding settlement. (*Id.* ¶ 3.) On February 8, 2011,
20 HAMC's counsel provided comments to the settlement agreement by email to
21 Defendants' counsel. Defendants' counsel responded to HAMC's February 9 email
22 and asked to schedule a time on February 11, 2011 for a telephone conference. (*Id.*
23 ¶¶ 5-6.) She received no response from HAMC's counsel to that email. Defendants'
24 counsel left a telephone message for HAMC's counsel on February 11 regarding this
25 matter. HAMC's counsel did not respond to the telephone message. (*Id.* ¶ 7.) On
26 Tuesday, February 15, 2011, Defendants' counsel left two phone messages for
27 HAMC's counsel and sent another email message. She has received no response.

1 HAMC's counsel's office phone number rings directly to an outgoing phone
2 message, with no receptionist. (*Id.* ¶¶ 7, 8.)

3 Defendants do not have any information or reason to conclude that HAMC has
4 decided to withdraw from settlement discussions. In addition, HAMC's counsel has
5 been responsive to email and phone messages in the past. The lack of any response
6 from HAMC's counsel over a week it is not consistent with Defendants' past
7 experience with him. The only exception to this experience has been in connection
8 with some personal health issues suffered by HAMC's counsel recently. (*Id.* ¶ 11.)

9 Unfortunately, Defendants anticipate that the parties will be unable to resolve
10 all outstanding settlement issues before their February 22, 2011 deadline to respond
11 to the Complaint. In the interests of judicial economy, and to enable the parties to
12 focus on finally resolving this matter, Defendants therefore believe that an additional
13 extension of time to facilitate continued settlement discussions is in the interest of all
14 parties. If HAMC's counsel has experienced any personal issues, the additional time
15 will allow time for him to participate in settlement discussions.

16 C. Conclusion

17 For all the reasons set forth above, Defendants respectfully request that the
18 Court enter an order granting them an extension of time to respond to the Complaint,
19 extending the deadline from February 22, 2011 to March 22, 2011.

20 Dated: February 16, 2011.

21 ARNOLD & PORTER LLP

22
23 By: /s/ Suzanne V. Wilson

24 Suzanne V. Wilson
25 Attorneys for Defendants Alexander
26 McQueen Trading Limited, Saks
27 Incorporated, and Zappos Retail, Inc.
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1 2011, not March 8, 2011. I sent an email to Mr. Clapp informing him of the Court's
2 order and asking about a time to talk last week to continue our settlement discussions.

3 5. On Tuesday, February 8, 2011, I received an email from Mr. Clapp
4 providing some comments on the draft settlement agreement. This is the last
5 communication I received from Mr. Clapp. I have not attached Mr. Clapp's email
6 because it contains settlement communications.

7 6. On Wednesday, February 9, 2011, I sent an email to Mr. Clapp thanking
8 him for his email from the day before and I requested a time for us to talk about the
9 agreement. I did not receive any response to my email. I have not attached my
10 February 9 email because the email consists of settlement communications.

11 7. On Friday, February 11, 2011, I called Mr. Clapp and left a voicemail
12 message for him asking him to call me regarding our settlement discussions.
13 Mr. Clapp's phone number forwards to an outgoing voicemail message and there is
14 no receptionist available to speak to. I did not receive any response to my phone
15 message.

16 8. On Tuesday, February 16, 2011, at 7:12 a.m., I emailed Mr. Clapp again
17 requesting that he contact me regarding our settlement discussions. I did not receive
18 any response. I also telephoned Mr. Clapp twice yesterday, February 16, and left
19 voicemail messages for him. I have not received any response.

20 9. In connection with this Application, I emailed and telephone Mr. Clapp
21 this afternoon to provide him notice. I have not received any response to either
22 message. My email notice to Mr. Clapp, sent at approximately 2:45 p.m., is attached
23 hereto as Exhibit B and incorporated herein by reference. My telephone message for
24 Mr. Clapp was left at approximately 2:48 p.m.

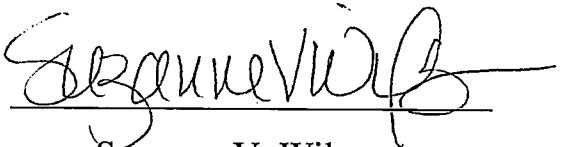
25 10. I have no reason to believe that Mr. Clapp or HAMC do not intend to
26 continue the parties' settlement communications.

27 11. During the course of my discussions with Mr. Clapp over the last several
28 months, he has been responsive to email and phone messages. The lack of any

1 response from him over the last week it is not consistent with my past experience
2 with him. The only exception to this experience has been in connection with some
3 personal health issues suffered by Mr. Clapp recently. He has sometimes been
4 unavailable for a short period of time due to these issues. To protect Mr. Clapp's
5 privacy, I have not included more detail in this declaration on this issue. I am happy
6 to discuss this issue further with the Court.

7 12. I believe that an additional extension of one month will permit the
8 parties the time necessary to communicate with each other and, hopefully reach a
9 final resolution in this matter, which was save the Court and the parties unnecessary
10 time and resources.

11 I declare under penalty of perjury under the laws of the United States of
12 America that the foregoing is true and correct. Executed February 16, 2011

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15 Suzanne V. Wilson
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