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8 **United States District Court**  
9 **Central District of California**

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11 DECKERS OUTDOOR CORPORATION,

12 Plaintiff,

13 v.

14 J.C. PENNEY COMPANY INC.; DOES

15 1–10, inclusive,

16 Defendants.

Case No. 2:14-cv-02565-ODW(MANx)

**ORDER GRANTING EX PARTE  
APPLICATION [21]**

17 After Defendant J.C. Penney Company Inc. had moved to dismiss Plaintiff  
18 Deckers Outdoor Corporation's Complaint for failure to state a claim, Deckers mooted  
19 the issue by filing an amended complaint. (ECF No. 18.) J.C. Penney sought an  
20 extension of time to respond to the First Amended Complaint from Deckers, but  
21 Deckers declined to stipulate to an extension. This Ex Parte Application ensued in  
22 which J.C. Penney seeks an extension until August 6, 2014, to respond. (ECF  
23 No. 21.) The Court **GRANTS** that Application, extending the response deadline until  
24 August 6, 2014.

25 Federal Rule of Civil Procedure 4(a)(3) provides that when a party files an  
26 amended pleading, the opposing party must respond "within the time remaining to  
27 respond to the original pleading or within 14 days after service of the amended  
28 pleading, whichever is later." If a party wishes to extend a deadline by which it must

1 respond, the court may extend the deadline for “good cause” if the party moves for the  
2 extension before expiration of the period. Fed. R. Civ. P. 6(b)(1)(A).

3 J.C. Penney had already filed a full motion to dismiss Deckers’s original  
4 Complaint when Deckers mooted the issue by filing its First Amended Complaint.  
5 Deckers therefore has only 14 days to respond to the amended complaint per Rule  
6 4(a)(3). Since J.C. Penney wishes to file another dismissal motion, it seeks additional  
7 time, citing its counsel’s busy schedule and Deckers’s alleged bad-faith conduct in not  
8 agreeing to an extension.

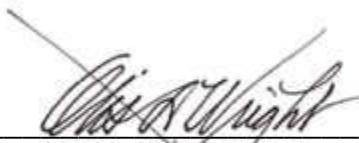
9 Deckers of course opposes the extension, arguing that J.C. Penney has failed to  
10 establish the requisite good cause for extending the response deadline. It contends  
11 that a busy schedule does not satisfy the standard.

12 An ex parte application such as this one rarely satisfies the elements set forth in  
13 *Mission Power Engineering Co. v. Continental Casualty Co.*, 883 F. Supp. 488 (C.D.  
14 Cal. 1995). But without the opposing party stipulating to the extension, a regularly  
15 noticed motion would unnecessarily elongate the dispute. The Court therefore does  
16 not fault J.C. Penney for filing this request as an ex parte application—especially  
17 since Deckers was well aware of the request in advance of the filing date.

18 Given that J.C. Penney now has to revise its previously filed dismissal motion  
19 solely because Deckers chose to file its First Amended Complaint, J.C. Penney should  
20 not be unnecessarily prejudiced by the rather short 14-day response window. The  
21 Court therefore **GRANTS** the Application and allows J.C. Penney to answer or  
22 otherwise respond by **August 6, 2014**. (ECF No. 21.)

23 **IT IS SO ORDERED.**

24  
25 July 15, 2014

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29 **OTIS D. WRIGHT, II**  
30 **UNITED STATES DISTRICT JUDGE**