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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 ANGEL H. HERNANDEZ,

11
12 Plaintiff,

13 v.

14 SENIOR DEPUTY COSTNER,

15
16 Defendants.
17

) CASE NO. 1:09-cv-00268-LJO-SMS
)
)

) **EX PARTE REQUEST REGARDING LATE**
) **FILING OF DEFENDANT’S RESPONSE TO**
) **ORDER TO SHOW CAUSE WHY DEFAULT**
) **JUDGMENT SHOULD NOT BE ENTERED**
) **[DOCUMENT NO. 18]; DECLARATION OF**
) **JAMES J. ARENDT IN SUPPORT**
) **THEREOF; ORDER THEREON**

18 Defendant respectfully requests relief from the Court by allowing a one day extension in the
19 filing of his response to the Court’s order to show cause why default judgment should not be entered.

20 As more fully outlined in Deputy Costner’s *Response to Order to Show Cause Why Default*
21 *Judgment Should Not Be Entered*, on December 9, 2010, the Court issued an order requiring Deputy
22 Costner to show cause why a default judgment should not be entered against him. *Doc. No. 18*. The
23 response was to be filed by December 27, 2010.

24 However, on December 27, 2010, counsel for Deputy Costner, James J. Arendt, was out of the
25 office due to illness and did not return until December 28, 2010. Immediately upon returning to his
26 office and realizing the response had not been filed in his absence, Mr. Arendt finalized it and
27 requested that it be electronically filed and served on the plaintiff.

28 Defendant respectfully requests relief from the Court by allowing a one day delay in the filing

Ex Parte Request Re: Late Filing
of Response To Order To Show Cause
Why Default Judgment Should Not Be Entered

1 of this document. Good cause exists due to being out ill and no prejudice resulted to plaintiff. Further,
2 for the sake of expediency, defendant is filing the response concurrently with this ex parte request.

3 DATED: December 28, 2010

4 WEAKLEY, ARENDT & MCGUIRE, LLP

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6 By: /s/ James J. Arendt
Attorneys for Defendant

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8 **DECLARATION OF JAMES J. ARENDT IN SUPPORT OF EX PARTE REQUEST**
9 **REGARDING LATE FILING OF DEFENDANT'S RESPONSE TO ORDER TO SHOW**
10 **CAUSE WHY DEFAULT JUDGMENT SHOULD NOT BE ENTERED**

11 I, James J. Arendt, declare as follows:

12 1. I am an attorney at law, duly licensed to practice before the courts in the State of
13 California and the United States District Court for the Eastern District of California. I am a partner
14 in the law firm of Weakley, Arendt & McGuire, LLP, the attorneys of record for defendant JOSH
15 COSTNER. As such, I have personal knowledge of the matters set forth herein, except those matters
16 stated on information and belief, and would so testify.

17 2. This declaration is made in support of Deputy Costner's response to the Court's order
18 to show cause why default judgment should not be entered.

19 3. On December 9, 2010, the Court issued an order requiring Deputy Costner to show
20 cause why a default judgment should not be entered against him. *Doc. No. 18*. The response was to
21 be filed by December 27, 2010.

22 4. However, on December 27, 2010, I was out of the office due to illness and did not
23 return until December 28, 2010. Immediately upon returning to my office and realizing the response
24 had not been filed I finalized it and requested that it be electronically filed and served on the plaintiff.

25 5. I respectfully request relief from the Court by allowing a one day delay in the filing of
26 this document. Good cause exists due to being out ill and no prejudice resulted to plaintiff. Further,
27 for the sake of expediency, defendant is filing the response concurrently with this ex parte request.

28 I declare under penalty of perjury under the laws of the United States that the foregoing is true
and correct to the best of my knowledge and belief and that this declaration was executed on December

1 28, 2010, in Fresno, California.

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/s/ James J. Arendt
James J. Arendt

ORDER

Good causes exists for the one day delay in the filing of Defendant's response to the Court's order to show cause why default judgment should not be entered. Defendant may file the response by December 28, 2010.

IT IS SO ORDERED.

DATED: December 29, 2010

/s/ SANDRA M. SNYDER
Honorable Sandra M. Snyder
United States District Court Magistrate Judge