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11 UNITED STATES DISTRICT COURT
 12 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

13 ELECTRONIC RECYCLERS
 14 INTERNATIONAL, INC., a corporation,

15 Plaintiff,

16 v.

17 CALBAG METALS CO., a corporation, and
 18 DOES 1 to 100, inclusive

19 Defendants.

Case No. 1:14-CV-01352 --- SMS

**EX PARTE APPLICATION AND ORDER
 EXTENDING DEADLINE FOR FILING
 ANSWER OR RESPONSE TO
 COMPLAINT**

*[Filed concurrently with Declaration of Daniel
 Cho]*

[NO HEARING REQUIRED]

Complaint Filed: August 28, 2014

EX PARTE APPLICATION FOR EXTENSION OF TIME

20 Defendant CALBAG METALS CO. (“Defendant”) hereby applies to this Court for an order
 21 extending the deadline to file its Answer or otherwise respond to Plaintiff’s Complaint on the grounds
 22 that good cause exists due to Defendant’s recent retention of the undersigned counsel and current
 23 unavailability of said counsel who is currently traveling in New York. Pursuant to Local Rule 144(c),
 24 Defendant now applies ex parte for an initial extension of time for Defendant to file an answer or to
 25 otherwise respond to the Complaint, because Plaintiff has unreasonably refused to stipulate to such
 26 extension. Specifically, Plaintiff has refused to grant an extension *unless Defendant agrees to file an*
 27 *Answer only, and waive its substantive rights to otherwise challenge Plaintiff’s Complaint.*
 28 (Declaration of Daniel S. Cho (“Decl. Cho”) ¶8.) On September 26, 2014, Defendant’s counsel

1 notified Plaintiff's counsel that Defendant intended to file its ex parte application in light of Plaintiff's
2 refusal to stipulate to allow Defendant an extension of time to file an answer or other type of
3 responsive pleading to the Complaint. (Decl. Cho ¶8.) This Application is based on the attached
4 Memorandum of Points and Authorities, the accompanying Declaration of Daniel Cho, all the
5 pleadings in the case, and such other arguments as may properly come before this Court.

6 MEMORANDUM OF POINTS AND AUTHORITIES

7 I.

8 BACKGROUND STATEMENT

9 Plaintiff ELECTRONIC RECYCLERS INTERNATIONAL, INC. ("Plaintiff") filed its
10 Complaint for Damages for (1) Breach of Contract, (2) Fraud/Constructive Fraud (3) Negligent
11 Misrepresentation (4) Breach of Covenant of Good Faith and Fair Dealing and (5) Violation of
12 Business and Professions Code Section 17200 ("Complaint") against Defendant on August 28, 2014.
13 Plaintiff purported to serve Defendant on or about September 10, 2014, although Plaintiff's service of
14 process was questionable. (Decl. Cho ¶4.) Notwithstanding, if the service date of September 10, 2014
15 is correct, Defendant's response to the Complaint would be due on October 1, 2014. (Decl. Cho ¶5.)
16 Defendant has not requested or received any prior extensions from Plaintiff to respond to the
17 Complaint. (Decl. Cho ¶6.) Daniel Cho, Defendant's counsel was formally retained to represent
18 Defendant on September 24, 2014. (Decl. Cho ¶7.) Mr. Cho has been in New York since September
19 20, 2014 and will return on September 29, 2014. (Decl. Cho ¶7.)

20 Given Mr. Cho's recent retention on September 24, 2014 and current unavailability, he has not
21 yet obtained, nor been able to review, his client's documents regarding this matter. (Decl. Cho ¶7.)
22 On the very next day following his engagement, Mr. Cho sent an email to Plaintiff's counsel, Anthony
23 Nguyen, requesting an extension to answer or otherwise respond to the Complaint up to and including
24 October 29, 2014 (i.e., 28 days), which is permitted upon written stipulation without further order of
25 the Court pursuant to Local Rule 144. (Decl. Cho ¶8.) However, Plaintiff (through its counsel Mr.
26 Nguyen) would only allow a two week extension upon the condition that Defendant file an Answer
27 only **and no other type of responsive**, despite the fact that the Court ordinarily will grant an initial
28 extension as a matter of course under the circumstances here, as provided in Local Rule 144(c).

1 (Decl. Cho ¶¶8-9.)

2 Plaintiff and its counsel's attempt to withhold and condition an extension upon a waiver of
3 Defendant's substantive rights is both unreasonable and unprofessional, and has now necessitated
4 Defendant to file this instant application, causing the Court to be unnecessarily burdened by a matter
5 that is commonly one of professional courtesy.

6 **II.**

7 **LAW AND ARGUMENT**

8 **A. A Request For Extension Of Time To Respond to a Complaint May Be Made By Ex**
9 **Parte Application.**

10 An ex parte application is recognized as an appropriate procedure for seeking an extension of
11 time to file a pleading. See *Gallo Winery v. Andina Licores S.A.*, 2006 U.S. Dist. Lexis 20113, *1-2
12 (E.D. Cal. 2006); *Hall v. Placer County Sheriff's Department*, 2013 U.S. Dist. Lexis 114348, *1 (E.D.
13 Cal. 2013); *Stewart v. Wachowski*, 2005 U.S. Dist. Lexis 46704, *33 (C.D. Cal. 2005).

14 An ex parte motion is proper where the court does not typically need an adversary presentation
15 from the other side in order to make its ruling. See, *In Re Intermagnetics America, Inc.* (C.D. Cal.
16 1989) 101 B.R. 191, 193. Local Rule 144(c) provides the Court may grant an initial extension *ex parte*
17 upon affidavit of counsel that a stipulation cannot be reasonably obtained, the reasons why such
18 stipulation cannot be obtained, and the reasons why the extension is necessary.

19 **B. The Court Should Grant Defendant's Ex Parte Application to Extend the Time to**
20 **Response to the Complaint.**

21 Here, Defendant cannot reasonably obtain an extension, because Plaintiff has unreasonably
22 refused to stipulate to an extension, unless Defendant waives its substantive right to challenge
23 Plaintiff's Complaint. Defendant engaged its counsel, Mr. Cho, on September 24, 2014. Mr. Cho is
24 currently in New York and has not yet obtained his client's documents to review the file. While Mr.
25 Cho expects to return from New York on Monday, September 29, 2014, he is handling other matters
26 in addition to this instant action, that require a 28-day extension, which is necessary so that he may
27 meet with his client, review and analyze his client's documents and law, and prepare an Answer or
28 other responsive pleading on behalf of Defendant. (Decl. Cho ¶12.)

1 This is Defendant's first extension request, which should be granted because, Plaintiff will not
2 be prejudiced by the extension whereas Defendant will be severely prejudiced if it does not receive the
3 extension. At all times, Defendant has acted diligently and with good cause in moving for this
4 extension. Respectfully, Defendant requests that this Court grant this ex parte application.

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6 Dated: September 26, 2014

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

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9 By: /s/ Daniel S. Cho
10 Christopher S. Hall
11 Daniel S. Cho
12 Attorneys for Defendant
13 CALBAG METALS CO.

14 **ORDER GRANTING EX PARTE APPLICATION**

15 Defendant having shown good cause for the extension of time to file an Answer or Response
16 to Plaintiff's Complaint, this Court grants Defendant's Ex Parte Application and orders Defendant's
17 Answer or other responsive pleading to be filed and served on or before October 29, 2014.

18 IT IS SO ORDERED.

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20 DATED: 9/29/2014

/s/ SANDRA M. SNYDER
UNITED STATES MAGISTRATE JUDGE

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