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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LIBERTY MUTUAL INSURANCE )  
CO., a Massachusetts Corp., )  
Plaintiff(s), )  
v. )  
UPA CALIFORNIA, a California )  
general partnership, et al., )  
Defendant(s). )  
\_\_\_\_\_ )

No. C08-0611 BZ

**ORDER GRANTING UPA  
DEFENDANTS' REQUEST FOR  
RELIEF**

Before the court is the motion of the UPA defendants for relief pursuant to Rule 60(b)(1) from the consequences of their failure to file a timely opposition to Liberty Mutual's motion to dismiss their counterclaims. The UPA defendants' motion for relief was filed on October 22, 2008, approximately 12 days after its opposition was due. The due date was set by court order which shortened the usual opposition time. The order was filed and served electronically. The UPA defendants contend their late filing constituted excusable neglect and support their position with a declaration of counsel. He explains the difficulties he has had accessing the electronic

1 case filing system from his Apple computer, difficulties that  
2 were compounded in recent months because he has had trouble  
3 receiving e-mails and has changed internet service providers  
4 to try to resolve his e-mail problems. Counsel also attests  
5 he attempted to avoid this motion by stipulation and Liberty's  
6 counsel would not accommodate him.

7 In its opposition, Liberty Mutual claims that the  
8 problems that defense counsel was experiencing were the sort  
9 of administrative difficulties which do not constitute  
10 excusable neglect and asserts that it would be prejudiced if  
11 the motion is granted because that would delay the hearing of  
12 their motion to dismiss by a few weeks.

13 Liberty Mutual's position is somewhat ironic in that its  
14 opposition was filed two days late and it does not appear to  
15 have sought any extension of time to file its opposition.  
16 Furthermore, the prejudice it contends it will suffer is  
17 easily cured.

18 Accordingly, the court finds as follows:

19 1. There is no need for a reply or oral argument and the  
20 court vacates the hearing presently scheduled for December 3,  
21 2008 on this motion.

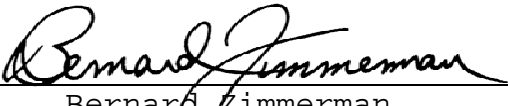
22 2. The court finds that there was excusable neglect such  
23 that the UPA defendants are **GRANTED** leave to file the  
24 opposition which they filed on November 10, 2008. The reply  
25 shall be filed by **Thursday, November 20, 2008**. Liberty  
26 Mutual's motion to dismiss will heard on **Wednesday,**

27 ///

28 ///

1 **December 3, 2008 at 10:00 a.m.**, only 7 days later than  
2 originally noticed.

3 Dated: November 12, 2008

4   
5 Bernard Zimmerman  
6 United States Magistrate Judge

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