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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

**AMENDED 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. However, the
13 prejudice Liberty Mutual contends it will suffer is easily
14 cured.

15 Accordingly, the court finds as follows:

16 1. There is no need for a reply or oral argument and the
17 court vacates the hearing presently scheduled for December 3,
18 2008 on this motion.

19 2. The court finds that there was excusable neglect such
20 that the UPA defendants are **GRANTED** leave to file the
21 opposition which they filed on November 10, 2008. The reply
22 shall be filed by **Thursday, November 20, 2008**. Liberty
23 Mutual's motion to dismiss will heard on **Wednesday,**
24 **December 3, 2008 at 10:00 a.m.**, only 7 days later than
25 originally noticed.

26 Dated: November 13, 2008

27 
28 Bernard Zimmerman
United States Magistrate Judge

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