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6 Attorneys for Plaintiff  
The Chuck Olsen Co., Inc.

8 UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 THE CHUCK OLSEN CO., INC.,

11 Plaintiff,

12 v.

13 MENDOCINO GOLD GIFTS LLC, et al.,

14 Defendants.

CASE NO. C08-03039 MEJ

**RESPONSE TO ORDER TO SHOW  
CAUSE**

**Hearing Date: November 5, 2009**  
**CMC Time: 10:00 a.m.**  
**CMC Place: Ctrm. B, 15<sup>th</sup> Floor**  
**San Francisco**

15  
16 I, Marion I. Quesenbery, in response to the Order to Show Cause dated October 22, 2009,  
17 respectfully declare and state:

18 1. I am the principal attorney representing Plaintiff The Chuck Olsen Co., Inc. in this  
19 action.

20 2. As the Order to Show Cause notes, on July 10, 2009, the Court issued an Order  
21 which stated that if the Clerk entered Default in this matter, "Plaintiff shall file a motion for  
22 default judgment within 30 days." Although I received this Order and read it, unfortunately it  
23 was not calendared on either my calendar or my office's. Considering the high quality of our  
24 office staff, the fault is no doubt mine.

1           3.       In any event, due to this inadvertent error, we did not file the Motion for Default  
2 Judgment within the time limit set by the Court. Even without the Court’s deadline, however, I  
3 had intended to file the Motion for Default Judgment shortly after default was entered; however,  
4 I was contacted by an attorney representing Defendant Anne I. Thomas who informed me that he  
5 intended to file a motion requesting that default be set aside as to his client. Specifically, he told  
6 me that Defendant Anne Thomas will allege in such a motion that she was not properly served  
7 (substitute service at her usual place of business), since – he informed me – she is allegedly no  
8 longer associated with Defendant Mendocino Gold Gifts, LLC (“Mendocino Gold”), where she  
9 was served, and was not at the time that the service was accomplished. As a result, before filing  
10 the Motion for Default Judgment, I began to investigate whether Defendant Thomas was and is,  
11 in fact, no longer associated with Mendocino Gold. Of course, had I properly calendared the  
12 deadline set by the Court, I would have filed the Motion for Default Judgment as to all other  
13 Defendants and asked the Court’s permission to delay filing against Defendant Thomas. Since  
14 Defendant Anne Thomas’ attorney contacted me, we have discussed resolving the complaint, as  
15 to Ms. Thomas, and/or avoiding a Motion to Set Aside Default. Given Defendant Anne Thomas’  
16 position in regard to service and her claim that she was not associated with Mendocino Gold  
17 when Plaintiff sold its produce to the company, it makes little sense to waste the court’s time and  
18 the parties’ money fighting the default, and I am inclined to stipulate that the default be set aside,  
19 as to Defendant Anne Thomas only, and to proceed on the merits (or, preferably, to settle the  
20 dispute).

21           3.       In sum, I sincerely apologize for not filing the Motion for Default Judgment and  
22 ask the Court’s indulgence one last time. Specifically, Plaintiff respectfully requests an  
23 additional 10 days to file a Motion for Default Judgment as to all Defendants (or as to all  
24

1 Defendants *except* Anne Thomas, *if* the Motion is coupled with a Stipulation or similar pleading  
2 requesting that the default be set aside as to Defendant Anne Thomas).

3 I declare under penalty of perjury under the laws of the United States that the foregoing is  
4 true and correct.

5 Date: October 28, 2009

RYNN & JANOWSKY, LLP

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By: /s/ Marion I. Quesenbery  
MARION I. QUESENBERY  
Attorneys for Plaintiff  
The Chuck Olsen Co., Inc.

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**IT IS SO ORDERED.**

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Date: October 30, 2008

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U.S. MAGISTRATE JUDGE

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