| 1 2 | Stuart E. Jones (SBN 104566) sjones@nielsenhaley.com | | |
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| 3 | Nielsen Haley & Abbott LLP 100 Smith Ranch Road, Suite 350 | | |
| | San Rafael, California 94903 | | |
| 4 | Telephone: (415) 693-0900 Facsimile: (415) 693-9674 | | |
| 5 | Attorneys for Defendant | | |
| 6 | LITTLE WISH FOUNDATION, INC. | | |
| 7 | UNITED STATES DISTRICT COURT | | |
| 8 | | | |
| 9 | NORTHERN DISTRICT OF CALIFORNIA | | |
| 10 | LITTLE WISHES, | Case No. 3:16-cv-06613-MMC | |
| 11 | Plaintiff. | DEFENDANT LITTLE WISH | |
| 12 | v.) | FOUNDATION, INC.'S EX PARTE APPLICATION FOR AN ORDER | |
| 13 | LITTLE WISH FOUNDATION,) | EXTENDING TIME TO RESPOND TO PLAINTIFF'S FIRST | |
| 14 |) | AMENDED COMPLAINT; PROPOSED | |
| 15 | Defendant.) | ORDER HON. MAXINE M. CHESNEY | |
| 16 |) | Complaint Filed: Nov. 15, 2016 | |
| 17 | <u> </u> | | |
| 18 | | | |
| 19 | EX PARTE APPLI | CATION | |
| 20 | Defendant Little Wish Foundation, Inc., hereby | applies to the Court ex parte for an Order | |
| 21 | extending time to respond to Plaintiff's First Amended | Complaint. | |
| 22 | On Aril 24, 2017, this Court entered an Order permitting Plaintiff to file its First Amended | | |
| 23 | Complaint. The Order was silent as to the deadline for | Defendant's filing of a responsive pleading. | |
| 24 | If no time is specified, the answer is due within the time remaining for response to the original | | |
| 25 | complaint or within 14 days after service of the amend | ed complaint, whichever is longer. [FRCP | |
| 26 | 15(a)(3)] Plaintiff's First Amended Complaint was filed on April 25, 2017. ECF 55. Therefore, a | | |
| 27 | responsive pleading is due on or before May 9, 2017. | | |
| 28 | On May 4 and 5 2017, The undersigned counse | l has contacted counsel for Plaintiff Little | |

DEFENDANT LITTLE WISH FOUNDATION, INC.'S EX PARTE APPLICATON FOR AN ORDER EXTENDING TIME TO RESPOND TO PLAINTIFF'S FIRST AMENDED COMPLAINT – 3:14-cv-06613-MMC

| 1 | Wishes by both voice-mail and by e-mail in order to request a stipulation to extend time to respond | | |
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| 2 | to Plaintiff's First Amended Complaint. Plaintiff's counsel has not responded to these requests. | | |
| 3 | On May 5, 2017, the undersigned advised Plaintiff's counsel by voice-mail and e-mail that | | |
| 4 | this ex parte request for an Order allowing an extension of time to respond to Plaintiff's First | | |
| 5 | Amended Complaint would be made to the Court. Plaintiff's counsel finally responded that she | | |
| 6 | would not consent to this request until after the undersigned agreed to a date and time to meet & | | |
| 7 | confer over a discovery dispute. | | |
| 8 | Defendant has not sought or obtained any previous extensions of time. Such an extension | | |
| 9 | of time is both timely and is necessary to allow Defendant additional time to prepare a response to | | |
| 10 | Plaintiff's First Amended Complaint which presents complex trademark, unfair competition and | | |
| 11 | common law claims. Due to ongoing settlement negotiations, responding to Plaintiff's discovery | | |
| 12 | requests, responding to Plaintiff's meet & confer letters and other related matters, Defendant has | | |
| 13 | not been able to complete its preparation of the responsive pleading. | | |
| 14 | Defendant requests an additional 7 days by which to file a response to Plaintiff's First | | |
| 15 | Amended Complaint. | | |
| 16 | NIELSEN, HALEY & ABBOTT LLP | | |
| 17 | | | |
| 18 | May 5, 2017 By: /s/ Stuart E. Jones | | |
| 19 | Stuart E. Jones Attorneys for Defendant | | |
| 20 | LITTLE WISH FOUNDATION, INC. | | |
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DECLARATION OF STUART E. JONES

On Aril 24, 2017, this Court entered an Order permitting Plaintiff to file its First Amended Complaint. The Order was silent as to the deadline for the filing of a responsive pleading. If no time is specified, the answer is due within the time remaining for response to the original complaint or within 14 days after service of the amended complaint, whichever is longer. [FRCP 15(a)(3)] Plaintiff's First Amended Complaint was filed on April 25, 2017. ECF 55. Therefore, a

On May 4 and 5 2017, I contacted counsel for Plaintiff Little Wishes by both voice-mail and by e-mail in order to request a stipulation to extend time to respond to Plaintiff's First Amended Complaint. Plaintiff's counsel has not responded to these requests.

responsive pleading is due on or before May 9, 2017.

On May 5, 2017, I advised Plaintiff's counsel by voice-mail and e-mail that this ex parte request for an Order allowing an extension of time to respond to Plaintiff's First Amended Complaint would be made to the Court. Plaintiff's counsel finally responded that she would not consent to this request until after the undersigned agreed to a date and time to meet & confer over a discovery dispute. I am in the process of scheduling the meet and confer with Plaintiff's counsel, however, Plaintiff's counsel has advised that she is working on other matters and cannot take calls today. I am concerned that this process will somehow break down and that my request for an extension of time will not be granted before the deadline to file a responsive pleading has expired.

Defendant has not sought or obtained any previous extensions of time. Such an extension of time is both timely and is necessary to allow Defendant additional time to prepare a response to Plaintiff's First Amended Complaint which presents complex trademark, unfair competition and common law claims. Due to ongoing settlement negotiations, responding to Plaintiff's discovery requests, responding to Plaintiff's meet & confer letters and other related matters, Defendant has not been able to complete its preparation of the responsive pleading.

Defendant requests an additional 7 days by which to file a response to Plaintiff's First Amended Complaint.

I declare under penalty of perjury under the laws of the United States of America that the

| 1 | foregoing is true and correct. | |
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| 3 | Dated: May 5, 2017 | /s/ Stuart E. Jones Stuart E. Jones |
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| 1 | EX PARTE ORDER | | |
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| 2 | and Plaintiff's statement of non-opposition thereto, Having considered Defendant's ex parte application for an extension of time to plead, and | | |
| 3 | finding good cause therefore. | | |
| 4 | IT IS HEREBY ORDERED that Defendant shall have to and including May 16, 2017 by | | |
| 5 | which to file a response to Plaintiff's First Amended Complaint. | | |
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| 7 | 4.4. | | |
| 8 | Dated: May 8, 2017 HONORABLE MAXINE CHESNEY | | |
| 9 | United States District Judge | | |
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