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 17 BARTECH SYSTEMS INTERNATIONAL, INC.

18 **UNITED STATES DISTRICT COURT**
 19 **DISTRICT OF NEVADA**

20 BARTECH SYSTEMS INTERNATIONAL,
 21 INC., a Delaware corporation,
 Plaintiff,
 22 vs.
 23 MOBILE SIMPLE SOLUTIONS, INC., a
 24 Delaware corporation, MOBILE SIMPLE
 SOLUTIONS (IAS), INC., a Canadian
 25 corporation, GEM SA, a Belgian corporation,
 VINCENT TESSIER, an individual,
 26 CHRISTELLE PIGEAT, an individual,
 27 Defendants.
 28

Case No. 2:15-cv-02422-MMD-NJK

**STIPULATION AND ORDER FOR
 EXTENSION OF JOINT PROPOSED
 PRETRIAL ORDER DEADLINE
 (Ninth Request)**

1 MOBILE SIMPLE SOLUTIONS, INC., a
2 Delaware corporation, VINCENT TESSIER,
3 an individual, CHRISTELLE PIGEAT, an
4 individual, GEM SA, a Belgian corporation,

5 Counterclaimants,

6 vs.

7 BARTECH SYSTEMS INTERNATIONAL,
8 INC., a Delaware corporation,

9 Counter-defendant.

10 Pursuant to the provisions of Federal Rule of Civil Procedure 6 and Local Rules IA 6-1, 7-1,
11 and 26-4, Plaintiff and Counter-defendant Bartech Systems International, Inc. (“Bartech”) and
12 Defendant and Counterclaimant GEM SA (“GEM”), by and through their attorneys, hereby
13 stipulate and agree that an extension by sixty (60) days to June 11, 2018 of the deadline for
14 submission of the proposed Joint Pretrial Order presently set for April 12, 2018 is necessary for
15 good cause shown. This is the ninth request for an extension of a scheduled deadline. The parties
16 agree that this will be the **final** extension of the Joint Pretrial Order deadline sought by either
17 Bartech or GEM.

18 **STIPULATION**

19 GEM and Bartech jointly agree that an extension by sixty (60) days to June 11, 2018 of the
20 deadline for submission of the proposed Joint Pretrial Order presently set for April 12, 2018 is
21 necessary for good cause shown. A Motion to extend a deadline set by a Scheduling Order must be
22 supported by a showing of “good cause.” Fed. R. Civ. P. 6(b)(1)(A); *see also* LR 26-4. This
23 Court’s Order set the deadline for submission of the proposed Joint Pretrial Order for April 12,
24 2018. *See* Order (ECF No. 459 at 1). The parties agree that the current deadline cannot reasonably
25 be met due to recent developments that have arisen from discovery previously authorized by this
26 Court, including the deposition of GEM’s corporate designee and the production by GEM of
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1 additional documents pursuant to this Court’s Order. *See* Order (ECF No. 459 at 22); Min. of Proc.
2 (ECF No. 423). Additionally, the parties further agree that the current deadline cannot reasonably
3 be met because the parties must meet and confer with Defendant Tessier regarding completion of
4 the Joint Pretrial Order.

5 On February 12, 2018, this Court directed GEM to, among other things:

6 [P]roduce documents in response to Plaintiff’s Requests for Production 7, 15 (for the
7 time period of September 1, 2016 to the present), 16 (excluding communications
8 between Defendant, Defendants Mobile Canada and Pigeat, and GBV), and 20 (for
9 the time period of August 1, 2016 – November 30, 2016), no later than March 12,
10 2018.

11 Order (ECF No. 452 at 22). On February 27, 2018, Bartech deposed GEM’s corporate designee
12 without the foregoing documents. On March 12, 2018, GEM produced to Bartech pursuant to this
13 Court’s Order over 500 pages of discovery, including certain documents related to GEM’s finances.

14 On February 27, 2018, Bartech learned during the deposition of GEM’s corporate designee
15 that GEM transferred on December 23, 2017, among other things, the ABreez software to a wholly-
16 owned French subsidiary named Mobile Simple Software Services (France) (“Mobile France”).¹
17 Since that time, the parties have worked diligently to resolve issues attendant to that transfer without
18 Court intervention. GEM produced on March 5 and 7, 2018 certain documents related to GEM’s
19 transfer of ABreez to Mobile France. Bartech anticipates filing imminently a Consent Motion for
20 Leave to File the Third Amended Complaint and a Third Amended Complaint to add Mobile
21 Simple Software Services (France) as a defendant in these proceedings to ensure the enforceability
22 of any judgment and injunctive relief subsequently obtained in this matter (“Consent Motion”). The
23

24
25 ¹ Bartech deposed GEM’s corporate designee one day after Bartech filed its Opposition to
26 GEM’s Request for Extension of Joint Proposed Pretrial Order Deadline (ECF No. 458). Bartech
27 has changed its position with respect to the Joint Pretrial Order deadline due to facts discovered
28 during the deposition of GEM’s corporate designee, documents produced by GEM pursuant to
this Court’s Order, and developments in Defendant Vincent Tessier’s bankruptcy case, as detailed
further herein.

1 parties agree that said Consent Motion will resolve any issues arising from the transfer of ABreez to
2 Mobile France.

3 Bartech requested a second deposition of GEM's corporate designee due to GEM's
4 production of documents related to the transfer of ABreez to Mobile France and those produced
5 pursuant to this Court's Order. GEM agreed to that deposition. The deposition will be held as soon
6 as April 13, 2018. In addition, Bartech intends to supplement the previously produced report of its
7 testifying damages expert, R. Christopher Rosenthal, based upon the documents recently produced
8 by GEM and the second deposition of GEM's corporate designee on those documents. Bartech has
9 offered to make Mr. Rosenthal available to GEM for a deposition in light of that supplemental
10 report. GEM reserves the right to challenge or object to any supplemental report provided by Mr.
11 Rosenthal.
12

13 The foregoing developments that have arisen from discovery previously authorized by this
14 Court should be resolved before the parties are positioned to file the proposed Joint Pretrial Order.
15 That is because the proposed Joint Pretrial Order requires the parties to, among other things, identify
16 specific portions of deposition transcripts to be offered at trial. *See* LR 16-3(b)(10). The parties are
17 unable to designate specific portions of deposition transcripts to be offered at trial where certain
18 depositions remain to be taken.
19

20 Separately, the parties agree that good cause exists for an extension by 60 days of the
21 deadline to file the Joint Pretrial Order due to developments in Defendant Vincent Tessier's Chapter
22 7 bankruptcy proceeding (*In re Tessier*, Case No. 17-15946-led). Importantly, the Bankruptcy
23 Court has scheduled a hearing for April 5, 2018 on the scope of a proposed Order that lifts the
24 automatic bankruptcy stay as to Defendant Tessier. That means that Defendant Tessier will become
25 active in this litigation as soon as April 5, 2018. The parties agree that a meet and confer with
26 Defendant Tessier regarding completion of the Joint Pretrial Order (*i.e.*, the exchange of exhibits
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1 and objections) is necessary. And that meet and confer cannot happen until the bankruptcy stay is
2 lifted.

3 In addition, Bartech has filed against Defendant Tessier an adversary proceeding captioned
4 *Bartech Systems International, Inc. v. Vincent Tessier*, Adversary Proceeding No.: 2:18-ap-1009
5 (the “Adversary Proceeding”). Bartech has also filed a Motion to Withdraw the reference of that
6 Adversary Proceeding to this Court. That Motion to Withdraw the Reference remains pending
7 before the Chief Judge of this Court in Case No. 2:18-cv-00212-GMN. Should that Motion to
8 Withdraw the Reference be granted and the Adversary Proceeding consolidated with this action,
9 then Bartech will be required to prove its non-dischargeability claims in this case. That will impact,
10 among other portions of the Joint Pretrial Order, statements of contested or material issues of fact or
11 law. *See* LR 16-3(b)(4)-(7).
12

13
14 The parties jointly propose the following schedule for completion of the Joint Pretrial Order
15 deadline by June 11, 2018:

16	Exchange of Exhibit Lists and	May 30, 2018
17	Portions of Deposition Transcripts to	
18	Be Used at Trial	
19	Exchange of Factual Admissions	June 1, 2018
20	Meet and Confer Regarding Factual	June 5, 2018
21	Admissions and Other Outstanding	
22	Issues	
23	Parties Exchange Final Versions of	June 8, 2018
24	Respective Contributions to the Joint	
25	Pretrial Order	
26	Bartech Will Compile Into One Joint	June 11, 2018
27	Pretrial Order the Parties’	
28	Respective Contributions and Send	
	the Final Version to Defendants for	
	Approval Before Filing	

1 **CONCLUSION**

2 For the foregoing reasons, GEM and Bartech jointly agree that an extension by sixty (60)
3 days to June 11, 2018 of the deadline for submission of the proposed Joint Pretrial Order presently
4 scheduled for April 12, 2018 is necessary for good cause shown.

5 DATED: April 5, 2018

DATED: April 5, 2018

6 PARSONS BEHLE & LATIMER

7 GREENE INFUSO, LLP

8
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GEM SA

18 Attorneys for Plaintiff/Counter-
19 Defendant
20 *BARTECH SYSTEMS INTERNATIONAL,*
INC.

21 NO FURTHER EXTENSIONS WILL BE GRANTED.

22 IT IS SO ORDERED:

23
24 
25 _____
26 UNITED STATES MAGISTRATE JUDGE

27 DATED: April 6, 2018
28 _____