

**LAW OFFICES OF BYRON THOMAS**  
BYRON THOMAS  
Nevada Bar No. 8906  
3275 S. Jones Blvd. Ste. 104  
Las Vegas, Nevada 89146  
byronthomaslaw@gmail.com  
Phone: (702) 747-3103  
Facsimile: (702) 543-4855  
Attorneys for Defendant Mims

## DISTRICT COURT

## CLARK COUNTY, NEVADA

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# ALPS PROPERTY & CASUALTY INSURANCE COMPANY

Plaintiff

Case No.: 2:17-CV-02057-JCM-PAL  
Dept. No.: XXVII

HAROLD P. GEWERTER,; HAROLD P. GEWERTER, ESQ.,; VINCENT HESSER

## Defendants

**EX PARTE MOTION TO EXTEND  
TIME TO RESPOND TO COMPLAINT  
(FIRST REQUEST)**

Defendant Vincent Hesser, by and through his attorney of record files this Ex Parte Motion for Extension of Time to Respond to Complaint. (First Request). The motion is based on the pleadings and papers on file, the points and authorities and any argument of counsel.

Dated this 31<sup>st</sup> day of August 2017.

## LAW OFFICES OF BYRON THOMAS

/s/ Byron E. Thomas

Byron E. Thomas, Esq.  
Nevada Bar No. 8906  
3275 S. Jones Blvd. Ste. 104  
Las Vegas, Nevada 89146  
Phone: (702) 747-3103  
Attorneys for Vincent Hesser

## **POINTS AND AUTHORITIES.**

Defendant Hesser's response to Plaintiff's Answer was originally due August 28, 2017. Defendant's counsel contacted Plaintiff before the expiration of the deadline to obtain an extension. Plaintiff's counsel agreed to an extension.

Defendant's counsel has been suffering from a sinus infection and flu like symptoms. See Declaration of Byron Thomas attached as **Exhibit "A."** Defendant's counsel illness grew worse, Defendant's counsel ears have clogged, Defendant's counsel has suffered what he hopes is a temporary loss of hearing and increased flu like symptoms. *Id.* Because of the worsening illness Defendant's counsel was not able to complete the stipulation or file a response by August 28, 2017.

The Court may extend the deadline after its expiration on a finding of excusable neglect. Plaintiff requests an extension until September 5, 2017.

Factors the Court should consider are as follows:

To determine whether the inadvertence can be excusable, we apply the Pioneer factors: (1) the danger of prejudice to the nonmoving party; (2) the length of delay; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the moving party's conduct was in good faith. *Id.* at 855 (citing *Pioneer*, 507 U.S. at 395, 113 S.Ct. 1489).

<sup>10</sup> *Pincay v. Andrews*, 389 F.3d 853, 858–59 (9th Cir.2004) (en banc).

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2 In the instant case the delay would only be eight (8) days, no other deadlines would  
3 be effected, Plaintiff would not be prejudiced. Plaintiff has reviewed the motion and has  
4 agreed not to oppose the extension. The illness was beyond Defendant's control, and  
5 Defendant is acting in good faith and does not have an ulterior motive for the request.

6 **CONCLUSION**  
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8 For the foregoing reasons the time to respond to Plaintiff's Complaint should be  
9 extended to September 5, 2017.

10 Dated this 31<sup>st</sup> day of August 2017

11 **LAW OFFICES OF BYRON THOMAS**

12 /s/ Byron E. Thomas

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Byron E. Thomas, Esq.  
14 Nevada Bar No. 8906  
15 3275 S. Jones Blvd. Ste. 104  
16 Las Vegas, Nevada 89146  
17 Phone: (702) 747-3103  
18 Attorneys for Vincent Hesser

19 IT IS SO ORDERED:  
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22 UNITED STATES DISTRICT JUDGE, or  
23 UNITED STATES MAGISTRATE JUDGE

24 DATED: September 8, 2017  
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15 **EXHIBIT “A”**  
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**BYRON E. THOMAS**  
**IN SUPPORT OF MOTION FOR EXTENSION OF TIME**

I, BYRON E. THOMAS, declare under penalty of perjury as follows:

1. I am an individual and a resident of Clark County, Nevada. I am over the age of 18. I am licensed to practice law in the State of Nevada, and I am in good standing. I am competent to make this declaration.

2. I am the counsel to Defendant Vincent Hesser in this litigation.

3. I contacted Plaintiff's counsel and was granted an extension. At the time of the request I was suffering from what I believed was a sinus infection and flu like symptoms. Before I could prepare the proper documentation of the stipulation, and or respond to the Complaint, my symptoms worsened my ears clogged and my hearing was significantly decreased as well as ringing in my ears, headache chills, congestion, cramping and body aches. And I was not able to respond to the Complaint on behalf of Defendant Hesser in a timely manner.

4. Therefore, the request for extension has been made in good faith. Moreover, Plaintiff's counsel has reviewed this Motion and will not oppose it.

5. As this will be Defendant Hesser's initial response the extension will not affect any deadlines.

6. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 31<sup>th</sup> day of August 2017.

/s/ BYRON E. THOMAS  
**Byron E. Thomas**