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6 **DISTRICT COURT**
 7
 8 **CLARK COUNTY, NEVADA**
 9 ***

8 **ALPS PROPERTY & CASUALTY**
 9 **INSURANCE COMPANY**

10 Plaintiff

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

11 vs.

12 **HAROLD P. GEWERTER,; HAROLD P.**
 13 **GEWERTER, ESQ.,; VINCENT HESSER**

14 Defendants

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

15
 16 Defendant Vincent Hesser, by and through his attorney of record files this Ex Parte
 17 Motion for Extension of Time to Respond to Complaint. (First Request). The motion is based
 18 on the pleadings and papers on file, the points and authorities and any argument of counsel.
 19

20 Dated this 31st day of August 2017.

21 **LAW OFFICES OF BYRON THOMAS**

22 /s/ Byron E. Thomas

23 _____
 24 Byron E. Thomas, Esq.
 25 Nevada Bar No. 8906
 26 3275 S. Jones Blvd. Ste. 104
 27 Las Vegas, Nevada 89146
 28 Phone: (702) 747-3103
 Attorneys for Vincent Hesser

1 **POINTS AND AUTHORITIES.**

2 Defendant Hesser’s response to Plaintiff’s Answer was originally due August 28,
3 2017. Defendant’s counsel contacted Plaintiff before the expiration of the deadline to
4 obtain an extension. Plaintiff’s counsel agreed to an extension.
5

6 Defendant’s counsel has been suffering from a sinus infection and flu like
7 symptoms. See Declaration of Byron Thomas attached as **Exhibit “A.”** Defendant’s
8 counsel illness grew worse, Defendant’s counsel ears have clogged, Defendant’s counsel
9 has suffered what he hopes is a temporary loss of hearing and increased flu like symptoms.
10 Id. Because of the worsening illness Defendant’s counsel was not able to complete the
11 stipulation or file a response by August 28, 2017.
12

13 The Court may extend the deadline after its expiration on a finding of excusable
14 neglect. Plaintiff requests an extension until September 5, 2017.
15

16 Factors the Court should consider are as follows:

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

22 *Pincay v. Andrews*, 389 F.3d 853, 858–59 (9th Cir.2004) (en banc).

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

CONCLUSION

For the foregoing reasons the time to respond to Plaintiff's Complaint should be extended to September 5, 2017.


Dated this 31st day of August 2017

LAW OFFICES OF BYRON THOMAS

/s/ Byron E. Thomas

Byron E. Thomas, Esq.
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Phone: (702) 747-3103
Attorneys for Vincent Hesser

IT IS SO ORDERED:


UNITED STATES DISTRICT JUDGE, or
UNITED STATES MAGISTRATE JUDGE

DATED: September 8, 2017

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EXHIBIT “A”

1
2 **BYRON E. THOMAS**
3 **IN SUPPORT OF MOTION FOR EXTENSION OF TIME**

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

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

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

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

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

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

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

22 Dated this 31th day of August 2017.

23
24 /s/ BYRON E. THOMAS
25 **Byron E. Thomas**