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IN THE SUPREME COURT OF THE STATE OF NEVADA

APCO CONSTRUCTION, INC.,)

)

Appellant,)

)

v.) No. 75197

)

ZITTING BROTHERS)

CONSTRUCTION, INC.,)

)

Respondent.)

RESPONDENT'S MOTION TO EXTEND DEADLINE FOR FILING
RESPONDENT'S ANSWERING BRIEF AND APPENDIX

Under Nev. R. App. P. 31(b)(3)(B), Zitting Brothers Construction, Inc. ("Zitting") respectfully moves for a twelve-day extension of the deadline to file its answering brief and appendix. This motion, if granted, will extend the deadline to July 1, 2019. This is the second request for extension of the deadline. This Court has not previously denied any request for extension of the deadline.

The original deadline was May 20, 2019. Under Nev. R. App. P. 31(b)(2), the parties had stipulated to the first extension of that deadline by thirty days. This

Court approved the stipulation, setting June 19, 2019 as the current deadline to file the answering brief and appendix. In that approval, this Court further stated that further extensions of this deadline will require a demonstration of “good cause.”

Good cause exists here. Additional time is necessary due to the recent unexpected unavailability of Zitting’s appellate counsel—Jorge Ramirez and I-Che Lai. Mr. Ramirez and Mr. Lai are both lead counsel in a certified class action pending in the Eighth Judicial District Court (*Elsinore, LLC et al. v. Woodcrest Homeowners Association*; Case No. A-13-685164-C). On May 28, 2019—after this Court had approved the first extension of deadline to June 19, 2019—the district court in *Elsinore* scheduled trial to start on June 10, 2019 and bifurcated the trial in two phases due to the expiration of the Five Year Rule, which expired on June 15, 2019. The second phase of the trial will start around September 2019. There was no trial date set prior to this emergency setting. Mr. Ramirez and Mr. Lai had not expected this June 10, 2019 emergency trial setting at the time the parties in this case stipulated to the first extension of the deadline to file the answering brief and appendix.

Since May 28, 2019, Mr. Ramirez and Mr. Lai devoted their time to prepare for this emergency trial. This involved

- drafting various trial-related materials, such as proposed voir dire questions, jury instructions regarding a novel issue of law, jury verdict forms, pre-trial memorandum, and trial briefs;
- preparing witnesses for trial;
- preparing for cross-examinations of adverse parties' witnesses;
- preparing opening statement and closing argument;
- attending trial; and
- developing plans to resolve various issues that arose during trial.

Trial preparation prevented Mr. Ramirez and Mr. Lai from devoting time to complete Zitting's answering brief and appendix.

Complicating the matter was the unexpected length of the first phase of the bifurcated class action trial. The court and the parties in *Elsinore* had expected the first phase of trial to conclude on June 17, 2019. However, trial took longer than expected. The parties had submitted the case to the jury around 8:00 p.m. on June 18, 2019. This prevented Mr. Ramirez and Mr. Lai from devoting time to complete the answering brief and appendix until the late evening of June 18, 2019—the night before the answering brief and appendix would be due.

Mr. Ramirez and Mr. Lai could not have had other attorneys at their firm to assist with the preparation of the answering brief during their unavailability. As evidenced by APCO Construction, Inc.'s opening brief and thirty volumes of

appendices, this appeal potentially involves complex issues that Mr. Ramirez and Mr. Lai are the only attorneys left at their firms with knowledge about the factual and legal issues currently on appeal. There is therefore not enough time for the other attorneys at their firm to review the extensive record below and complete the brief that Mr. Ramirez and Mr. Lai had worked on.

The extraordinary circumstances discussed above presents an extreme need for the fourteen-day extension and is evidence of good cause. Zitting submits this request in good faith so that it would recover as much of the initial thirty-day extension lost through its appellate counsels' unexpected trial preparation and attendance.

Respectfully submitted on June 19, 2019,

**WILSON, ELSER, MOSKOWITZ,
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/s/Jorge A. Ramirez

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CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2019, a true and correct copy of Respondent's Motion to Extend Deadline for Filing Respondent's Answering Brief and Appendix was served via the Nevada Supreme Court's electronic filing system upon all parties registered with the court in this case.

By: /s/Annemarie Gourley
An Employee of WILSON ELSEER MOSKOWITZ
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