STATE OF SOUTH DAKOTA :SS
COUNTY OF HANSON

IN CIRCUIT COURT

FIRST JUDICIAL CIRCUIT
File # 30CIV25-32

JOHN & DEBORAH E. HORNIDGE,
PLAINTIFFS

-vs-

PLAINTIFFS' MOTION TO EXTEND TIME TO REPLY COUNTERCLAIM

BRENT & MELISSA MENTELE,
HANSON COUNTY, SOUTH DAKOTA,
A local government subdivision,
STATE OF SOUTH DAKOTA-
DEPARTMENT OF REVENUE,
STATE OF SOUTH DAKOTA-
DEPARTMENT OF LABOR,
LINCOLN COUNTY, SOUTH DAKOTA,
A local government subdivision,
AAA COLLECTIONS INC.,
CREDIT COLLECTIONS INC.,
CREDIT COLLECTIONS BUREAU,
RUSHMORE SERVICE CENTER, LLC,
ROGER GERLACH
DEFENDANTS.

Comes now Plaintiffs, John Hornidge and Melissa Hornidge, respectfully present to this Court their Motion for the statutory extension of time as authorized pursuant to SDCL 15–6-6 b(b)(2) and acts amendatory thereof and supplemental thereto.

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1. There is attached hereto, marked exhibit A, by this reference incorporated herein as fully as though set forth verbatim herein, the Affidavit of J. R. Davies.

2. The three requirements to support a Motion to enlarge the time. Those are: [1] "Plaintiffs" neglect in timely Replying defendant's counterclaim was excusable; [2] to prevail on a Motion to enlarge time to file a Reply after expiration of the time, defendant must show a probable meritorious defense; and [3] Plaintiffs have alleged a meritorious defense to Defendants' counterclaim. They are to be liberally construed. Colton Lumber Company v. Simmonsma 651 N.W. 2d 871, 2002 S.D.116 (2002).

3. Excusable neglect: Plaintiffs had had contact with an attorney requesting information on behalf of the defendant Melissa Mentele and had also been contacted directly by defendant at various points in time with an allegation from her that she was, at the time of making the comment, not represented by counsel. However, she also acknowledged that she got billed for services from that attorney.

4. In spite of the attorney's allegation that he would file a Reply, no notice of appearance was ever made.

5. When defendant Melissa Mentele personally delivered her Reply and counterclaim to the undersigned, Plaintiffs' attorney is the immediate reaction of "a civil matter with 30 days to Reply" and notation was made in his calendar to file the Reply on a deadline 30 days after service of the counterclaim. This was inadvertent and incorrect since the time on a counterclaim established by SDCL is 20 days. This was not the deliberate act to delay.

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6. Meritorious defense: the Reply sets forth a meritorious defense to Plaintiffs' counterclaim for specific performance and damages through the allegations of insufficient payments of interest and untimely payments on the contract. The payments are incomplete.

7. Plaintiffs have alleged a meritorious defense of principal and interest were incomplete and untimely.

Wherefore, Plaintiffs pray that this Court:

[A] deny defendant's Motion for default judgment on the counterclaim;

[B] accept Plaintiffs Reply which is attached hereto and filed herewith and

[C] set the matters in defendant's counterclaim for trial with the balance of the other matters in this file; and

[D] for such other, further, and additional proceedings and relief as the Court deems to be just and equitable in the premises.

Dated: June 30, 2026.

J. R. Davies
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