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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY OF FORT BRAGG,
Plaintiff,
v.
MENDOCINO RAILWAY,
Defendant.

Case No. 22-cv-06317-JST

**ORDER DENYING MOTION FOR
EXTENSION OF TIME TO FILE
EVIDENTIARY OBJECTIONS AND TO
EXTEND PAGE LIMIT OF
EVIDENTIARY OBJECTIONS**

Re: ECF No. 22

United States District Court
Northern District of California

Before the Court is Plaintiff City of Fort Bragg’s motion for an extension of time to file evidentiary objections to Defendant Mendocino Railway’s declaration in opposition to Plaintiff’s motion to remand and for an extension of the page limit of such objections. ECF No. 22. Plaintiff failed to file the objections at issue with Plaintiff’s reply to Defendant’s opposition.

Because Plaintiff failed to make this request prior to the due date of Plaintiff’s reply, *see* Civ. L.R. 7-3, Civ. L.R. 7-4, the motion is governed by Federal Rule of Civil Procedure 6(b). Under Rule 6(b), “(1) When an act . . . must be done within a specified time, the court may, for good cause, extend the time: . . . (B) on a motion made after the time has expired if the party failed to act because of excusable neglect.” Fed. R. Civ. P. 6(b)(1)(B). Excusable neglect is assessed by balancing four factors: “(1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith.” *In re Veritas Software Corp. Sec. Litig.*, 496 F.3d 962, 973 (9th Cir. 2007) (quoting *Bateman v. USPS*, 231 F.3d 1220, 1223-24 (9th Cir. 2000)). Whether a party’s neglect is excusable “is a decision committed to the discretion of the district court.” *Id.* at 974.

Addressing these factors in turn, the Court first finds that Defendant would not be prejudiced because the Court would, in granting an extension, preserve Defendant’s opportunity

1 to respond to those objections in accordance with Civil Local Rule 7-3. The first factor thus
2 weighs in Plaintiff's favor.

3 Second, Plaintiff filed its reply on December 12, 2022, ECF No. 18, untimely filed
4 objections on December 20, 2022, ECF No. 20, withdrew those untimely objections on December
5 22, 2022, ECF No. 21, and filed the instant motion on December 28, 2022, ECF No. 22. The
6 sixteen-day period between the deadline for filing objections and the filing of the instant motion is
7 substantial. *See Baker v. Ensign*, 2014 WL 4352167, at *6 (S.D. Cal. Aug. 29, 2014) (finding that
8 a "fourteen-day delay before requesting the continuance is a substantial amount of time").
9 However, the impact on the proceedings is minimal, as the motion for remand is scheduled for
10 hearing on February 2, 2023, which provides the Court with ample time to review the untimely
11 objections and Defendant's response thereto. The second factor thus weighs in Plaintiff's favor.

12 Third, and "most salient[,] . . . is Plaintiff's asserted reason for the delay." *Whitaker v.*
13 *Brighton Collectibles, LLC*, 2022 WL 17587136, at *1 (N.D. Cal. Nov. 22, 2022). Plaintiff's
14 counsel's proffered explanation for the delay is that she had more pressing obligations in other
15 matters and had a pre-planned vacation during which she was unable to seek relief "due to travel
16 time restrictions, being in transit, . . . limited internet connectivity[,] and "experience[ing]
17 significant rain conditions that were not safe for the use of [her] computer." ECF No. 22-1 at ¶ 2-
18 6. This explanation is unconvincing, and essentially "admits that the delay was within [counsel's]
19 reasonable control," *Whitaker*, 2022 WL 17587136, at *1, and therefore not a factor weighing in
20 favor of granting relief. Plaintiff's counsel was apprised of the reply deadline on November 21,
21 2022, when Plaintiff filed its motion to remand. *See* ECF No. 15. Given Plaintiff's counsel's
22 impending workload and pre-planned vacation, counsel could have sought an extension ahead of
23 the deadline as soon as it became apparent that she would be unable to file the objections with the
24 reply, or she could have sought an extension contemporaneously with her timely filing of
25 Plaintiff's reply. And to the extent counsel was unaware that it would be impermissible to file the
26 objections in an untimely manner without order of the Court, the Ninth Circuit has recognized that
27 "a lawyer's failure to read the applicable rules is one of the least compelling excuses that can be
28 offered." *Pincay v. Andrews*, 389 F.3d 853, 859 (9th Cir. 2004) (en banc). The third factor thus

United States District Court
Northern District of California

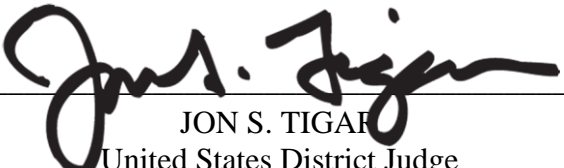
1 weighs heavily in Defendant’s favor.

2 Fourth, Defendant does not assert and the Court finds no evidence that Plaintiff’s counsel
3 acted in bad faith. The fourth factor thus weighs in Plaintiff’s favor.

4 Balancing each of the four factors, the Court finds that Plaintiff’s counsel’s neglect is not
5 excusable. Although the three factors weigh in favor of a finding of excusable neglect, the fourth
6 factor outweighs the other three because the proffered reason for the delay is unconvincing. *See*
7 *Pincay*, 389 F.3d 859-60 (affirming district court’s finding of no excusable neglect where the
8 reason for delay was counsel’s “carelessness” and “the other three factors militate[d] in favor of
9 excusability”). For this reason, Plaintiff’s motion is denied.

10 **IT IS SO ORDERED.**

11 Dated: January 9, 2023



JON S. TIGARI
United States District Judge