

1 JONES MAYER
2 Krista MacNevin Jee, Esq., SBN 198650
3 kmj@jones-mayer.com
4 3777 North Harbor Boulevard
5 Fullerton, CA 92835
6 Telephone: (714) 446-1400
7 Facsimile: (714) 446-1448

8 Attorneys for Plaintiff,
9 CITY OF FORT BRAGG

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 CITY OF FORT BRAGG,

13 Plaintiff,

14 v.

15 MENDOCINO RAILWAY,

16 Defendants.

Case No. 22-CV-06317-JST

*Assigned for all purposes to:
Hon. Jon S. Tigar, Ctrm. 6*

ADMINISTRATIVE MOTION TO
EXTEND TIME AND PAGE LIMIT FOR
FILING OF EVIDENTIARY OBJECTIONS
TO DECLARATION OF ROBERT PINOLI
IN SUPPORT OF OPPOSITION TO
MOTION TO REMAND, AND
ACCOMPANYING DECLARATION OF
KRISTA MACNEVIN JEE IN SUPPORT
THEREOF

Action Filed: October 20, 2022

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT CODE SECTION 6103



1 **ADMINISTRATIVE MOTION TO EXTEND TIME AND PAGE LIMIT FOR**
2 **FILING EVIDENTIARY OBJECTIONS AND**
3 **DECLARATION OF KRISTA MACNEVIN JEE IN SUPPORT THEREOF**

4 **I. INTRODUCTION**

5 Plaintiffs, the City of Fort Bragg [DOC. 15] and the California Coastal Commission
6 [DOC. 14] each timely filed a Motion to Remand the above-captioned matter to state court on
7 November 21, 2022. Defendant Mendocino Railway (“MR”) timely filed its consolidated
8 opposition thereto on December 5, 2022 [DOC. 16], including the Declaration of Robert Pinoli
9 [DOC. 17]. The City timely filed a Reply on December 12, 2022 [DOC. 19].

10 The City was unable to file Evidentiary Objections with the Reply, and so it did so at the
11 earliest opportunity on December 20, 2022 [DOC. 20]. *See* Declaration of Krista MacNevin Jee
12 in support hereof (“Jee Decl.”), at ¶¶ 2-6. Thereafter, MR’s counsel demanded that the City
13 withdraw the objections. Jee Decl., at ¶ 7. Although the City’s counsel attempted to obtain a
14 stipulation that MR agree to the late filing of the Evidentiary Objections and/or the City would be
15 willing to agree to stipulate to an extended period of time for MR to object to the Evidentiary
16 Objections, MR would not agree to the former and did not respond to the latter offer. *Id.* Since the
17 City’s counsel was on vacation from December 13, 2022 through December 26, 2022, and MR’s
18 counsel had also indicated that he would be on a pre-paid vacation during the time that he
19 purported that objections would be due to the Evidentiary Objections, on December 26, 2022, the
20 City temporarily withdrew the filed pleadings [DOC. 21] – even though the City’s counsel had
21 indicated that the within motion would be filed the week of December 26, 2022. *Id.*

22 Based on good cause and/or excusable neglect, as detailed herein, the City requests this
23 Court to order that the time and page limits be extended for the filing of the City’s Evidentiary
24 Objections and the accompanying Declaration of Krista MacNevin Jee in support thereof, or in
25 the alternative that the City be permitted to file supplemental objections within the Reply page
26 limitations, and the supporting declaration. Also, the Court is requested to permit any objection
27 thereto to be filed by MR within seven (7) days thereafter. MR will suffer no prejudice, and this
28 Court will be caused no delay or other hardship, since the hearing date is February 2, 2023.

1 **II. BRIEF STATEMENT OF FACTS.**

2 Plaintiff City of Fort Bragg filed the within action against Mendocino Railway in the
 3 Mendocino Superior Court of the State of California more than a year ago, on October 28, 2021
 4 [DOC. 1-1] In support of the City’s action against MR, the California Coastal Commission filed
 5 a Complaint in Intervention on November 7, 2022. [DOC. 9] Although the Commission sought
 6 the same claims as the City, except that the Commission alleged specific violations by MR of the
 7 California Coastal Act (Cal. Pub. Res. Code §§ 30000, et seq.), and the Commission set forth
 8 certain anticipated preemption defenses that MR has repeatedly asserted in the City’s state action
 9 since the outset of its filing, MR belatedly and improperly removed the within action to this
 10 Court. Currently pending by the City and the Commission are motions to remand the matter to
 11 the state court. The motions were filed by both the City and the Commission, as well as a
 12 consolidated opposition and the Declaration of Robert Pinoli, timely filed late in the day by MR
 13 on December 5, 2022, and a timely reply filed by the City on December 12, 2022, as set forth
 14 above. However, City’s counsel was unable to file Evidentiary Objections, and the supporting
 15 declaration, along with the reply. Jee Decl., at ¶¶ 2-6. The latter documents were filed at the
 16 earliest opportunity thereafter, on December 20, 2022, for the reasons detailed herein. *Id.* In
 17 order to accommodate the vacation schedule of MR’s counsel, the City temporarily withdrew the
 18 filed Evidentiary Objections until this motion could be filed. Jee Decl., at ¶ 7.

19 **III. THERE IS GOOD CAUSE AND/OR EXCUSABLE NEGLIGENCE FOR THE**
 20 **REQUESTED EXTENSION OF TIME, PAGE LIMIT AND/OR SEPARATE**
 21 **FILING, AND NO HARM OR PREJUDICE WILL RESULT THEREFROM.**

22 Plaintiff City submits this motion in order to obtain an order permitting the late filing of
 23 the Evidentiary Objections and supporting declaration, for the reasons set forth herein. Plaintiff
 24 respectfully submits that there is good cause and/or excusable neglect for the brief continuance of
 25 the time, page limit and separate filing, and no prejudice.

26 Local Rule 7-11 provides that an administrative motion may be filed for miscellaneous
 27 matters, including, for instance, “motions to exceed otherwise applicable page limitations,” and
 28 other matters, such as that sought here, for an extension of time and for the separate filing of the

1 evidentiary objections and declaration, as well as any objections thereafter by Defendant MR.
2 Rule 7-11 also provides that such motion “must set forth specifically the action requested and the
3 reasons supporting the motion,” as well as why a stipulation could not be obtained. As applicable
4 here, the Court’s Local Rules also require that “[a]ny evidentiary and procedural objections to
5 [an] opposition must be contained within the reply brief or memorandum.” L.R. 7-3 (c). The
6 Rules further provide that any “[o]bjection to Reply Evidence must be filed and served not more
7 than 7 days after the reply was filed.” L.R. 7-3 (d)(1).

8 Generally, “[t]he Court has broad discretion to grant or deny an extension of time.
9 Federal Rule of Civil Procedure 6(b)(1)(B) provides that “[w]hen an act may or must be done
10 within a specified time, the court may, for good cause, extend the time . . . on motion made after
11 the time has expired if the party failed to act because of excusable neglect.” *Daley v. Greystar*
12 *Real Estate Partners LLC*, 2020 U.S. Dist. LEXIS 147106, *9-10 (E.D. Wash. 2020) (citing
13 *Pincay v. Andrews*, 389 F.3d 853, 859 (9th Cir. 2004)). *See also, e.g., Oliver v. Babcock*, 2013
14 U.S. Dist. LEXIS 71366, *2-3 (C.D. Cal. 2013) (whether to grant extension of time is within
15 court’s discretion); *Cunningham-Dirks v. Nevada*, 2013 U.S. Dist. LEXIS 37907, *3 (D.C. Nev.
16 2013) (same) (citing *Ahanchian v. Xenon Pictures*, 624 F.3d 1253, 1258 (9th Cir. 2012); *Santos v.*
17 *Mercedes-Benz United States*, 2019 U.S. Dist. LEXIS 187493, *2-3 (S.D. Cal. 2019) (court can
18 grant extensions “retroactively”; analysis is “elastic” and “not limited strictly to omissions caused
19 by circumstances beyond the control of the movant”) (quotations omitted) (quoting *Pioneer Inv.*
20 *Servs. Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 392 (1993)). Further, the determination of
21 “excusable neglect” is an “equitable one, taking account of all relevant circumstances surrounding
22 the party's omission.” *Daley*, *9-10 (citing *Pioneer*, at 395).

23 To make such evaluation, the Court considers “four [non-exclusive] factors: (1) the danger
24 of prejudice to the opposing party; (2) the length of the delay and its potential impact on the
25 proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith.” *Id.*
26 (quotations omitted). Even when there is no “satisfactory excuse” for the late filing of an
27 opposition, for instance, these equitable factors are satisfied and there is, at least, excusable
28 neglect supporting approval of a late-filing, where there is no prejudice, a brief delay, “little

1 impact on the proceedings,” and no apparent bad faith. *Smith v. Bank of Amer.*, 2016 U.S. Dist.
 2 LEXIS 186336, *4-7 (C.D. Cal. 2016) (citing *Pioneer*, at 395; *Briones v. Riviera Hotel & Casino*,
 3 116 F.3d 379, 381 (9th Cir. 1996) (quoting *Pioneer*, at 391).

4 All of the above factors are present here and support the requested delay under the
 5 circumstances. There is little danger of prejudice to MR, since the request includes MR’s ability
 6 to file any objection ordinarily permitted under Local Rule 7-3, and the hearing on the underlying
 7 motion is not until February 2, 2023. For the same reasons, the court’s preparation for the
 8 motion, and the proceedings, would also thus not be expected to be impacted or delayed. Further,
 9 the reason for the delay is based on good cause, or at least excusable neglect -- in that counsel’s
 10 workload – including: unexpected work and new actions requiring counsel’s attention; court
 11 matters entitled to statutory preference and time constraints also requiring the immediate attention
 12 of counsel before and after the due date for the Reply and evidentiary objections; as well as the
 13 pre-planned vacation of Plaintiff’s counsel, unexpected severe weather restrictions, and
 14 limitations on cellular and internet connectivity during that time, all contributed to the initial and
 15 brief eight-day delay in the filing of the Evidentiary Objections and declaration, which were all
 16 reasonable under the circumstances, and could not have been anticipated in advance. Jee Decl., at
 17 ¶¶ 2-6. *Id.* See *Fox v. Uribe*, 2020 U.S. Dist. LEXIS 143950, *1 (N.D. Cal. 2020) (granting
 18 motion extension based, in part, on “counsel’s workload” and “travel plans”). In addition, the
 19 detail in the objections could not be contained within the Reply for the same reasons. Jee Decl.,
 20 at ¶ 6. Based on all of the above, there is good cause for the requested relief, and the *Pioneer-*
 21 *Briones*’ factors are met. However, in the alternative, the Court is requested to permit objections
 22 to be filed as a supplement to the Reply, within its page limitations, along with the declaration.
 23 See, e.g., *Tello v. Kaiser Permanente*, 2020 U.S. Dist. LEXIS 89835, *2 n.1 (C.D. Cal. 2020)
 24 (granting request for late filing of objections). Counsel also offered to stipulate to the late/separate
 25 filing, and as to MR’s time to object, but MR’s counsel would not agree. Jee Decl., at ¶ 7.

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IV. CONCLUSION.

For all of the foregoing reasons, the Court is requested to grant the request, permitting the late-filing and page limit extension, or in the alternative, late-filing within the page limit, plus the declaration. There is sufficiently demonstrated good cause, excusable neglect and/or no bad faith in the filing of the pleadings only eight days after the Reply, no prejudice to MR will occur, and the proceedings will not be delayed due to underlying motion hearing February 2, 2023.

Dated: December 28, 2022

JONES MAYER

By: /s/ Krista MacNevin Jee

Krista MacNevin Jee, Attorneys for Plaintiff,
CITY OF FORT BRAGG