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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 DONNA WERNER,

11 Plaintiff,

12 v.

13 HOLLAND AMERICA LINE, INC.,

14 Defendant.

CASE NO. C19-1439JLR

ORDER GRANTING
PLAINTIFF'S MOTION FOR
LEAVE TO FILE OPPOSITION
BRIEF

15 This matter comes before the court on Plaintiff Donna Werner's motion for leave
16 to file an opposition to Defendant Holland America Line, Inc.'s ("Holland America")
17 motion for summary judgment. (*See* Mot. (Dkt. # 33); *See also* MSJ (Dkt. # 20).) For
18 the reasons set forth below, the court GRANTS Ms. Werner's motion.

19 **A. Procedural Posture**

20 This case was originally filed in Alaska state court. (*See* Compl. (Dkt. # 1-1) at 1.)
21 Holland America removed this case to the United States District Court for the District of
22 Alaska on December 4, 2018. (*See* Not. of Removal (Dkt. # 1) at 1.) On August 22,

1 2019, that court granted Holland America’s motion to stay the case pending the outcome
2 of Holland America’s motion to change venue. (*See* 8/22/19 Order (Dkt. # 19); MTS
3 (Dkt. # 18).) Four days later, on August 26, 2019, Holland America filed a motion for
4 summary judgment. (*See* MSJ.) In that motion, Holland America stated that “[a]lthough
5 it is [Holland America’s] position that the transfer issue needs to be resolved prior to
6 consideration of the merits of this action, with no stay having been entered, briefing on
7 this [m]otion can proceed pending a ruling on the [m]otion to [t]ransfer.” (*Id.* at 20
8 (citation to footnote omitted).)

9 On September 3, 2019, the court granted Holland America’s motion to transfer
10 venue and directed the Clerk for the District of Alaska to transfer the case to the United
11 States District Court for the Western District of Washington. (9/3/19 Order (Dkt. # 21) at
12 15.) The Clerk instructed the parties that “[i]f a motion is pending and undecided at the
13 time of transfer, the moving party must note it for consideration on the court’s calendar in
14 accordance with LCR 7(d).” (*See* 9/10/19 Ltr. (Dkt. # 24).) On September 19, 2019,
15 Holland America re-noted its summary judgment motion for October 11, 2019, the fourth
16 Friday after September 19, 2019. (Not. of Re-Noting (Dkt. # 27) at 1.)

17 On October 11, 2019, Holland America filed a reply in support of its summary
18 judgment motion, noting that Ms. Werner failed to file an opposition to the motion. (MSJ
19 Reply (Dkt. # 29).) Holland America also noted that Ms. Werner’s counsel had not
20 appeared or affiliated with local counsel, but that Holland America emailed Ms. Werner’s
21 counsel a courtesy copy of the notice re-noting its summary judgment motion. (*Id.* at 2
22 n.1.)

1 Ms. Werner's Alaska counsel applied to appear *pro hac vice* on October 22, 2019.
2 (*See* PHV Appl. (Dkt. # 30).) On October 23, 2019, local counsel for Ms. Werner
3 appeared, and Ms. Werner's Alaska counsel's *pro hac vice* application was granted. (*See*
4 Not. of Appearance (Dkt. # 32); 10/23/19 Order (Dkt. # 30)). On the same day, Ms.
5 Werner filed the present motion for leave to file an opposition to Holland America's
6 summary judgment motion. (*See* Mot. at 1.)

7 **B. Ms. Werner's Motion**

8 Ms. Werner asks the court to grant her leave to file an opposition to Holland
9 America's summary judgment motion pursuant to Federal Rule of Civil Procedure
10 6(b)(1)(B). (*See id.* at 2-3 (citing Fed. R. Civ. P. 6(b)(1)(B).) Along with her motion for
11 leave to file an opposition, Ms. Harbers filed what appears to be the opposition she
12 wishes to file. (*See* Opp. (Dkt. # 33-2).)

13 The court may extend the time to file a response for good cause if the extension
14 request is made "before the original time or its extension expires." *See* Fed. R. Civ. P.
15 6(b)(1)(A). However, the party seeking an extension must meet the higher showing of
16 "excusable neglect" if they make the extension request "after the time has expired." *See*
17 Fed. R. Civ. P. 6(b)(1)(B). Although not entirely clear from Ms. Werner's motion, by
18 citing to Rule 6(b)(1)(B), she appears to concede that she failed to timely file her
19 opposition to Holland America's summary judgment motion. (*See* Mot. at 4.)

20 The court first concludes that Holland America's summary judgment motion was
21 originally filed improperly because the case was stayed. (*See* 8/22/19 Order at 2.)
22 However, because the stay was "pending the Court's Order on the Motion for Change of

1 Venue” (*see id.*), the stay was lifted when the District of Alaska ruled on that motion and
2 transferred the case to the Western District of Washington. (*See* 9/3/19 Order.)

3 Subsequently, Holland America re-noted its motion for the fourth Friday following the
4 filing of the motion in accordance with Local Civil Rule 7(d)(3), which allowed Ms.
5 Harbers the amount of time to respond set forth in the Local Civil Rules. *See* Local Civil
6 Rules W.D. Wash. LCR 7(d)(3). Accordingly, Ms. Harbers must meet Rule 6(b)(1)(B)’s
7 “excusable neglect” standard. The court concludes that she does.

8 Under normal circumstances, Holland America re-noting its motion pursuant to
9 Local Civil Rule 7(d)(3) would allow Ms. Werner sufficient time to file an opposition.
10 However, the record reflects that Ms. Werner had difficulty obtaining local counsel as
11 required by the local civil rules. (*See* Mot. at 2; Twomey Decl. (Dkt. # 2) ¶ 6.) Ms.
12 Werner asserts that since September 10, 2019, her Alaska counsel undertook “efforts to
13 retain local counsel,” but that “it was not until October 18, 2019 that a relationship with
14 local counsel was formed.” (*See* Mot. at 2; Twomey Decl. ¶ 6.) Ms. Werner further
15 contends that “[w]hile Plaintiff’s Alaska counsel was out of state caring for his spouse he
16 was alerted to Defendant’s position that an opposition had not been filed when Defendant
17 provided a copy of their reply memorandum.” (*See* Mot. at 2 (citation to footnote
18 omitted); Twomey Decl. ¶ 7.) Ms. Werner further contends that Holland America would
19 suffer no prejudice from allowing Ms. Werner to file her opposition. (*See* Mot. at 5.)

20 Holland America filed a response to Ms. Werner’s motion on October 25, 2019.
21 (Resp. (Dkt. # 36).) Holland America “takes no position on [Ms. Werner’s] request for
22 leave to file an opposition to Holland America’s motion for summary judgment.” (*Id.* at

1 1.) Nevertheless, Holland America includes several pages of argument that appears to
2 oppose Ms. Werner’s request. (*See, e.g., id.* at 3 (“Plaintiff’s contention that Holland
3 America will not be prejudiced by an extension is somewhat misplaced.”).) If the court
4 grants Ms. Werner leave to file an opposition, “Holland America respectfully requests the
5 Court permit time to file a reply brief per LCR(d)(3).” (*Id.*)

6 Given the confusion created by the stay and transfer, Ms. Werner’s counsel’s
7 difficulty in retaining local counsel, and Ms. Werner’s counsel’s family health issues, the
8 court finds that Ms. Werner has shown excusable neglect. Additionally, the court finds
9 that Holland America will not suffer prejudice—the dispositive motions deadline in this
10 case is not until March 3, 2020. (*See* Sched. Order (Dkt. # 25).) Accordingly, the court
11 GRANTS Ms. Werner’s motion for leave to file an opposition brief. However, the court
12 cautions Ms. Werner’s counsel that court will strictly enforce the deadlines set by this
13 case’s scheduling order and the Local Civil Rules. (*See id.*) Any further extension
14 requests—even where stipulated—must “be filed sufficiently in advance of the deadline
15 to allow the court to rule on the motion prior to the deadline.” *See* Local Civil Rules
16 W.D. Wash. LCR 7(j) (“Parties should not assume that the motion will be granted and
17 must comply with the existing deadline unless the court orders otherwise.”).

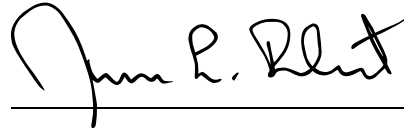
18 Accordingly, the court DIRECTS the clerk to re-note Holland America’s motion
19 for summary judgment (Dkt. # 20) for **December 6, 2019**. Ms. Werner shall file her
20 opposition brief in the form in which she filed it in conjunction with the present motion

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1 (see Dkt. # 33-2) by **November 26, 2019**. Holland America may file a reply, if any, to
2 the opposition by **December 6, 2019**.

3 Dated this 21st day of November, 2019.

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6 JAMES L. ROBART
United States District Judge

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