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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Boston Post Partners II LLP,
10 Plaintiff,

11 v.

12 Golden Sands Partnership, et al.,
13 Defendants.
14

No. CV-16-02401-PHX-DLR

ORDER

15
16 Plaintiff/Counterdefendant Boston Partners II, LLC has filed a Motion for Court to
17 Accept Its Summary Judgment Opposition Papers Filed One Day Late. (Doc. 134.)
18 Defendants filed their summary judgment motions on February 13, 2017. Pursuant to
19 LRCiv 56.1, Plaintiff's responses were due 30 days later on March 15, 2017, but Plaintiff
20 filed them one day later. Plaintiff's counsel, James Livingstone, states in a sworn
21 declaration that he anticipated filing Plaintiff's responses on March 15, 2017, but he
22 encountered technical difficulties with the Court's electronic filing system, CM/ECF.
23 Specifically, Mr. Livingstone's password did not work and he tried three times to reset it
24 prior to the filing deadline, but was unsuccessful.

25 The following day, Mr. Livingstone emailed Plaintiff's responses to counsel for
26 Defendants and filed the materials with the Court. He also emailed counsel for
27 Defendants and asked if they would consent to a one day extension of time to
28 accommodate his delayed filings. Surprisingly, counsel for Defendants refused,

1 apparently because they did not believe the CM/ECF system was down for maintenance
2 during the relevant time. Neither attorney, however, responded that the delay prejudiced
3 their clients.

4 For good cause, the Court may accept documents filed late due to excusable
5 neglect. Fed. R. Civ. P. 6(b)(1)(B). “Determining whether neglect is excusable requires
6 a court to balance the danger or prejudice to the [other party], the length of the delay and
7 its potential impact on judicial proceedings, the reason for the delay, . . . and whether the
8 movant acted in good faith.” *Uche-Uwakwe v. Shinseki*, 349 Fed. App’x 136, 137 (9th
9 Cir. 2009) (internal quotation and citations omitted). “This rule, like all the Federal
10 Rules of Civil Procedure, is to be liberally construed to effectuate the general purpose of
11 seeing that cases are tried on the merits.” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d
12 1253, 1258-59 (9th Cir. 2010) (internal quotation and citation omitted).

13 Here, the Court need not await a response from Defendants to conclude that good
14 cause, the interests of justice, and the spirit of the Federal Rules of Civil Procedure weigh
15 in favor of Plaintiff’s requested extension. Counsel for Defendants complained of no
16 prejudice to their clients when responding to Mr. Livingstone’s email, nor can the Court
17 conceive of any meaningful prejudice under these circumstances. Mr. Livingstone filed
18 Plaintiff’s responses a mere one day late, and the delay appears to have resulted from
19 technical difficulties and not from bad faith.

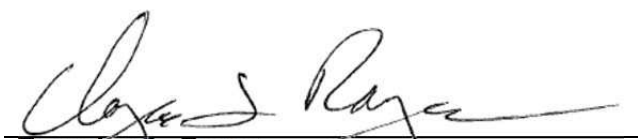
20 Absent meaningful prejudice to their clients, counsel for Defendants should have
21 agreed to Mr. Livingstone’s request as a matter of professional courtesy. This would
22 have obviated the need for Plaintiff to file the present motion and its accompanying
23 twenty pages of attachments, and would have saved the judicial resources spent in having
24 to issue an order granting the motion. Civil litigation is not a war to be won at all costs,
25 and there is no need to “play hardball” in order to prevail on the merits. Rule 1 of the
26 Federal Rules of Civil Procedure makes clear that the rules should be employed by the
27 parties not as a “gotcha game” to take advantage of innocent and harmless mistakes by
28 the other side, but to “secure the just, speedy, and inexpensive determination of every

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action[.]” In short, the “purpose of the court system is to resolve civil disputes in a civil way.” *Younes v. 7-Eleven, Inc.*, 312 F.R.D. 692, 708 (D.N.J. 2015).

IT IS ORDERED that Plaintiff’s Motion for Court to Accept Its Summary Judgment Opposition Papers Filed One Day Late (Doc. 134) is **GRANTED**.

Dated this 22nd day of March, 2017.



Douglas L. Rayes
United States District Judge