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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

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11 Alfred Green,

12 Plaintiff,

13 v.

14 Corizon Health Services, et al.,

15 Defendants.
16

No. CV-18-00068-TUC-RM

ORDER

17 Pending before the Court is Defendant Corizon Health Services, Inc.'s Motion for
18 Leave to File a Reply to the Motion for Summary Judgment. (Doc. 83.) Also pending
19 before the Court is Plaintiff's "Request for Default Against Defendants" (Doc. 85) which
20 shall be re-docketed as a Response to Defendant's Motion for Leave to File a Reply.

21 On November 15, 2019, Defendant filed a Motion for Summary Judgment. (Doc.
22 74.) Plaintiff filed a Response on December 23, 2019 (Doc. 80), and Defendant's Reply
23 was due on January 7, 2020 (see Doc. 76.) Defendant requested leave to file an untimely
24 Reply on April 3, 2020. (Doc. 83.) Defendant states that its failure to file a timely Reply
25 was an "inadvertent oversight." (Id.) Defendant states that it was actively litigating the
26 matter, as it had filed a motion for summary judgment and was intending to file a reply.
27 (Id.) Plaintiff filed a "Request for Default Against Defendants" on April 14, 2020. (Doc.
28 85.) Although Plaintiff's filing is captioned "Request for Default," upon reviewing the
filing, the Court determines that it is a Response in opposition to Defendant's Motion.

1 Plaintiff argues that “Defendants should not be able to shield their actions or inactions by
2 using case citations when it is simply [] a legal and tactical advantage. Plaintiff makes
3 this request[] just as, would have the defendant had the plaintiff failed to reply to
4 summary judgment.” The Court infers that Plaintiff opposes Defendant’s request for
5 leave to file a late reply.

6 A court may extend the time for a party to act “on motion made after the time has
7 expired if the party failed to act because of excusable neglect.” Fed. R. Civ. P. 6(b). The
8 determination of whether neglect is excusable is “an equitable one, taking account of all
9 relevant circumstances surrounding the party’s omission.” *Pioneer Inv. Servs. Co. v.*
10 *Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). Such factors include “the
11 danger of prejudice to the [opposing party], the length of the delay and its potential
12 impact on judicial proceedings, the reason for the delay, including whether it was within
13 the reasonable control of the movant, and whether the movant acted in good faith.” *Id.*
14 Where the failure to act was the result of excusable neglect, the Court is permitted to
15 accept late filings caused by inadvertence, mistake, or carelessness. *Id.* at 388.

16 The Court finds that Defendant has shown that the untimely filing of the Reply
17 was the result of excusable neglect. The Court has not yet issued a ruling on the Motion
18 for Summary Judgment. Therefore, the three-month delay in filing the Reply has, if any,
19 a slight impact on judicial proceedings and creates mild, if any, prejudice to Plaintiff.
20 Although Plaintiff opposes the request, he has not shown that the late filing would cause
21 prejudice or have a substantial impact on the proceedings. Moreover, there is no evidence
22 that Defendant has acted in bad faith. Absent some countervailing factor not present here,
23 a party’s late filing as a result of inadvertence or carelessness is properly characterized as
24 excusable neglect and is therefore permissible under Fed. R. Civ. P. 6(b).

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Accordingly,

IT IS ORDERED that Defendant’s Motion for Leave to File a Reply to the Motion for Summary Judgment (Doc. 83) is **granted**. Defendant’s Lodged Proposed Reply to the Motion for Summary Judgment (Doc. 84) shall be filed as Defendant’s Reply to the Motion for Summary Judgment.

IT IS FURTHER ORDERED that the Clerk of Court shall **re-docket** Plaintiff’s “Request for Default Against Defendants” (Doc. 85) as a Response to the Motion for Leave to File a Reply.

Dated this 24th day of April, 2020.



Honorable Rosemary Márquez
United States District Judge