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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
Fresno Division

9 TRUSTEES ON BEHALF OF THE
10 NORTHERN CALIFORNIA GENERAL
TEAMSTERS SECURITY FUND,

11 Plaintiff,

12 vs.

13 FRESNO FRENCH BREAD BAKERY,
INC., d/b/a BASQUE FRENCH BAKERY,
14 and ALVIN LEWIS, an individual,

15 Defendants.

Case No. 12-CV-00187 LJO-BAM

APPLICATION FOR LATE FILING OF
PLEADING AND ORDER

Date: August 31, 2012
Time: 9:00 a.m.
Courtroom: 8

Magistrate Judge McAuliffe

17 I, Laurence F. Padway, hereby declare under penalty of perjury that:

18 1. I am the attorney for defendants.

19 2. As the result of a clerical error in managing the calendar for this case, I
20 inadvertently removed the due date for the opposition to the motion to strike jury demand when
21 the Court issued its order vacating the hearing on the motion to dismiss in this case. We maintain
22 a regular office calendar which is intended to insure that we comply with all due dates, and we
23 have regular office meetings where due dates for documents are reviewed. Unfortunately, I
24 misread the calendar and I deleted the due date for the opposition to the motion to strike in
25 addition to deleting the hearing date on the motion to dismiss, and the error had not lasted long
26 enough to be discovered in the ordinary course of reviewing files.

27 3. On August 17, in the course of reporting the status of the case to the client, I
28

1 realized that there was an error in the calendar, but was not certain as to what error had occurred.
2 Accordingly, on Saturday, August 18, I came into the office for the purpose of reconciling my
3 calendar against the docket sheet in this case, and at that time discovered that the opposition to
4 the motion to strike had been due on August 17. As a result the opposition to the motion to
5 strike jury demand has been filed one day late. While I was aware that counsel for plaintiff was
6 on vacation, I did call his office today on the off chance that I might reach him to secure a
7 stipulation to the late filing, but I did not reach him.

8 4. I am not aware of any prejudice to any party as a result of the filing of the
9 opposition one day late, and have no objection to extending the time for plaintiff to reply should
10 plaintiff require such.

11 5. For the foregoing reasons, I request the Court to accept the opposition to
12 motion to strike jury demand, notwithstanding its being filed one day late.

13 Executed his 18th day of August, 2012, at Alameda, California.

14
15 /s Laurence F. Padway
16
17

18 **ORDER**

19 On August 18, 2012, Defendants filed an opposition to Plaintiff's Motion to Strike Demand
20 for Jury, as well as the instant application requesting that the Court permit its untimely filing. (Docs.
21 33, 34). In the application, Defendants' counsel indicates that he mis-calendered the filing deadline.
22 Defendants' counsel explains that he attempted to reach Plaintiff to obtain a stipulation to
23 accommodate the late filing, but was unable to do so.

24 Given that Defendants' opposition is only one day late and Plaintiff will not suffer prejudice
25 from allowing the late opposition, the Court will permit the late filing. Defendants' counsel is
26 advised that he must follow the Local Rules of this Court. Accordingly, late filings in the future will
27 be looked upon with disfavor.
28

1 It is hereby ordered that Defendants may have to and including **August 18, 2012**, to file their
2 opposition to Plaintiff's motion to strike jury demand.

3 Plaintiff shall file a Reply to Defendants' opposition, if necessary, no later than **August 24,**
4 **2012.** The Court has taken this matter under submission and it will not be scheduled for a hearing
5 unless the Court determines it is necessary.

6
7 IT IS SO ORDERED.

8 Dated: August 20, 2012

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE