

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
7

8 **TREVOR WEEKS,**

9 **Plaintiff**

10 **v.**

11 **UNION PACIFIC RAILROAD CO.,**

12 **Defendant**
13

CASE NO. 1:13-CV-1641 AWI JLT

**ORDER ON PLAINTIFF'S EX PARTE
APPLICATION TO EXTEND TIME**

(Doc. No. 31)

14 Trial in this matter is set for August 4, 2015, and the pre-trial conference is set for June 3,
15 2015. On March 2, 2015, Defendant filed a motion for summary judgment. Hearing on this
16 motion was set for April 6, 2015. On March 31, 2015, the Court took the motion under
17 submission; Plaintiff had not filed an opposition.

18 On April 9, 2015, Plaintiff's counsel filed an ex parte application to extend time to file an
19 opposition. See Doc. No. 31. Plaintiff's application indicates that Plaintiff's counsel is effectively
20 operating as a solo practitioner, he was experiencing family and health related issues around the
21 time that Defendant's motion was filed, his legal assistant (who is the only other person in the
22 office) was sick for several days near the beginning of March, his legal assistant did not notice that
23 Defendant had filed the motion, and counsel relies on his legal assistant to print and keep track of
24 motions filed electronically. See id. Plaintiff's counsel argues that there is no harm to Defendant,
25 there only is a minimal delay that will not affect proceedings because trial is set for August 2015,
26 the reason for the delay was an administrative error, and that he is acting in good faith. See id.

27 Federal Rule of Civil Procedure 6(b)(1) provides, "When an act may or must be done
28 within a specified time, the court may, for good cause, extend the time . . . on motion made after

1 the time has expired if the party failed to act because of excusable neglect.” Fed. R. Civ. Pro.
2 6(b)(1)(B). “‘Good cause’ is a non-rigorous standard,” and Rule 6(b)(1) is “liberally construed to
3 effectuate the general purposes of seeing that cases are tried on the merits.” Ahanchian v. Xenon
4 Pictures, Inc., 624 F.3d 1253, 1259 (9th Cir. 2010). To determine whether there is “excusable
5 neglect,” courts consider: (1) the danger of prejudice to the opposing party, (2) the length of the
6 delay, (3) the reason for the delay, and (4) whether the movant acted in good faith. Warkentin v.
7 Federated Life Ins. Co., 594 Fed. Appx. 900 (9th Cir. 2014).

8 Here, the Court is satisfied that Plaintiff has demonstrated excusable neglect and good
9 cause. The Court sees no danger of prejudicing Defendant since only an opposition to a fully
10 briefed summary judgment motion is at issue. There will be some delay in proceedings, but the
11 delay will be only a matter of several weeks, and it appears (at this point at least) that the trial and
12 pre-trial conference dates will remain in place. The reason for the delay is due to administrative
13 error, and no bad faith is apparent. Given the non-rigorous standards involved for “good cause,”
14 the purposes of Rule 6(b)(1), and the declaration of Plaintiff’s counsel, the Court will grant
15 Plaintiff’s motion and extend the time to file an opposition.

16
17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff’s ex parte application for additional time (Doc. No. 31) is GRANTED;
19 2. Plaintiff may file an opposition to Defendant’s motion for summary judgment on or by
20 April 20, 2015; and
21 3. Defendant may file a reply to Plaintiff’s opposition on or by April 27, 2015.¹

22
23 IT IS SO ORDERED.

24 Dated: April 10, 2015



25 SENIOR DISTRICT JUDGE

26
27 _____
28 ¹ If, after having reviewed the submissions of the parties, the Court determines that a hearing on Defendant’s motion would be beneficial, the Court will set a hearing date at that time. Otherwise, the Court will decide the matter on the papers after receiving Defendant’s reply. See Local Rule 230.