

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
For the Northern District of California

UNITED STATES DISTRICT COURT
Northern District of California
San Francisco Division

KENDRA NICOLE WALKER,
Plaintiff,
v.
MB FINANCIAL BANK, N.A.,
Defendant.

No. C 13-03601 LB

**AMENDED¹ ORDER (1) GRANTING
PLAINTIFF'S ADMINISTRATIVE
MOTION FOR LEAVE TO FILE A
LATE OPPOSITION, (2)
DISCHARGING THE COURT'S
ORDER TO SHOW CAUSE, AND (3)
CONTINUING THE HEARING ON
DEFENDANT'S MOTION TO STAY**

[Re: ECF Nos. 11, 25]

Plaintiff Kendra Nicole Walker filed this action against defendant MB Financial Bank, N.A. on August 2, 2013. Complaint, ECF No. 1.² She filed a First Amended Complaint on August 27, 2013. FAC, ECF No. 5. MB Financial answered her First Amended Complaint on September 18, 2013. Answer, ECF No. 9. All parties have consented to the undersigned's jurisdiction. Consent (Ms. Walker), ECF No. 7; Consent (MB Financial), ECF No. 14.

On September 23, 2013, MB Financial filed via the court's ECF system a motion to stay this action during the pendency and resolution of an Illinois state court case that was initiated prior to

¹ The court amends this order to make clear that the hearing is continued to January 16, 2014 at 9:30 a.m., not 11:00 a.m as the previous order stated.

² Citations are to the Electronic Case File ("ECF") with pin cites to the electronically-generated page numbers at the top of the document.

1 this action. Motion, ECF No. 11. This meant that Ms. Walker’s deadline to file an opposition was
2 October 7, 2013. She did not, and she also did not file a statement of non-opposition. Thus, the
3 court ordered her to file a written response by Tuesday, October 15, 2013 showing cause why she
4 failed to file either an opposition or a statement of non-opposition to MB Financial’s motion to stay
5 this action. First Order to Show Cause, ECF No. 18. The court also noted that the failure to file a
6 response could be construed as a non-opposition to MB Financial’s motion and result in it being
7 granted. *Id.*

8 On October 14, 2013, Ms. Walker filed a response. Response to First Order to Show Cause,
9 ECF No. 19. In it, her counsel explains that while her opposition to MB Financial’s motion is
10 “substantially completed,” “on the due date of the opposition, [he] suffered a flareup of a chronic
11 cardiac condition which required emergency medical attention” and prevented him from filing the
12 opposition on time. *Id.* That same day, the parties filed a stipulation that, among other things,
13 continued the deadline for Ms. Walker to file her opposition to October 28, 2013, the deadline for
14 MB Financial to file any reply by November 4, 2013, and the hearing on the motion to December 5,
15 2013. Stipulation, ECF No. 20. The court granted the stipulation on October 15, 2013. Granted
16 Stipulation, ECF No. 21.

17 October 28, 2013 came and went without Ms. Walker filing an opposition. So, the court ordered
18 her to file a written response by Tuesday, November 5, 2013 showing cause why she has failed to
19 file either an opposition or a statement of non-opposition to MB Financial's motion to stay this
20 action. Second Order to Show Cause, ECF No. 23. On November 5, 2013, Ms. Walker filed a
21 response. Response to Second Order to Show Cause, ECF No. 24. In it, her counsel says that he
22 was confused because he was under the impression that MB Financial and he had agreed to stipulate
23 to stay the case further to allow the parties to discuss settlement. *Id.* Indeed, Ms. Walker’s counsel
24 says that MB Financial’s counsel was preparing a stipulation to temporarily stay the case and
25 continue the hearing on MB Financial’s motion from December 5, 2013 to January 16, 2014. *Id.*
26 No stipulation has been filed, however.

27 Then, on November 8, 2013, Ms. Walker filed both an administrative motion seeking leave to
28 file a late opposition as well as her opposition. Administrative Motion, ECF No. 25; Opposition,

1 ECF No. 27. Obviously, Ms. Walker should have waited to see if the court granted her
2 administrative motion seeking leave to file a late opposition before she went ahead and filed it, but
3 given that MB Financial has not opposed Ms. Walker's administrative motion (and the time for
4 doing so has passed), the court **GRANTS** Ms. Walker's administrative motion. MB Financial may
5 file a reply by November 21, 2013 (seven days from the date of this order).

6 In light of this situation, the court also **DISCHARGES** the order to show cause and finds good
7 cause to **CONTINUE** the hearing on MB Financial's motion to stay to January 16, 2014 at 9:30 a.m.

8 **IT IS SO ORDERED.**

9 Dated: November 14, 2013



LAUREL BEELER
United States Magistrate Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28